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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] (1910).

No. [redacted]22.

THE KENTUCKY UNION COMPANY, PLAINTIFF IN ERROR,

vs.

THE COMMONWEALTH OF KENTUCKY.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF KENTUCKY.

FILED JULY [redacted], 1910.

(21,249.)

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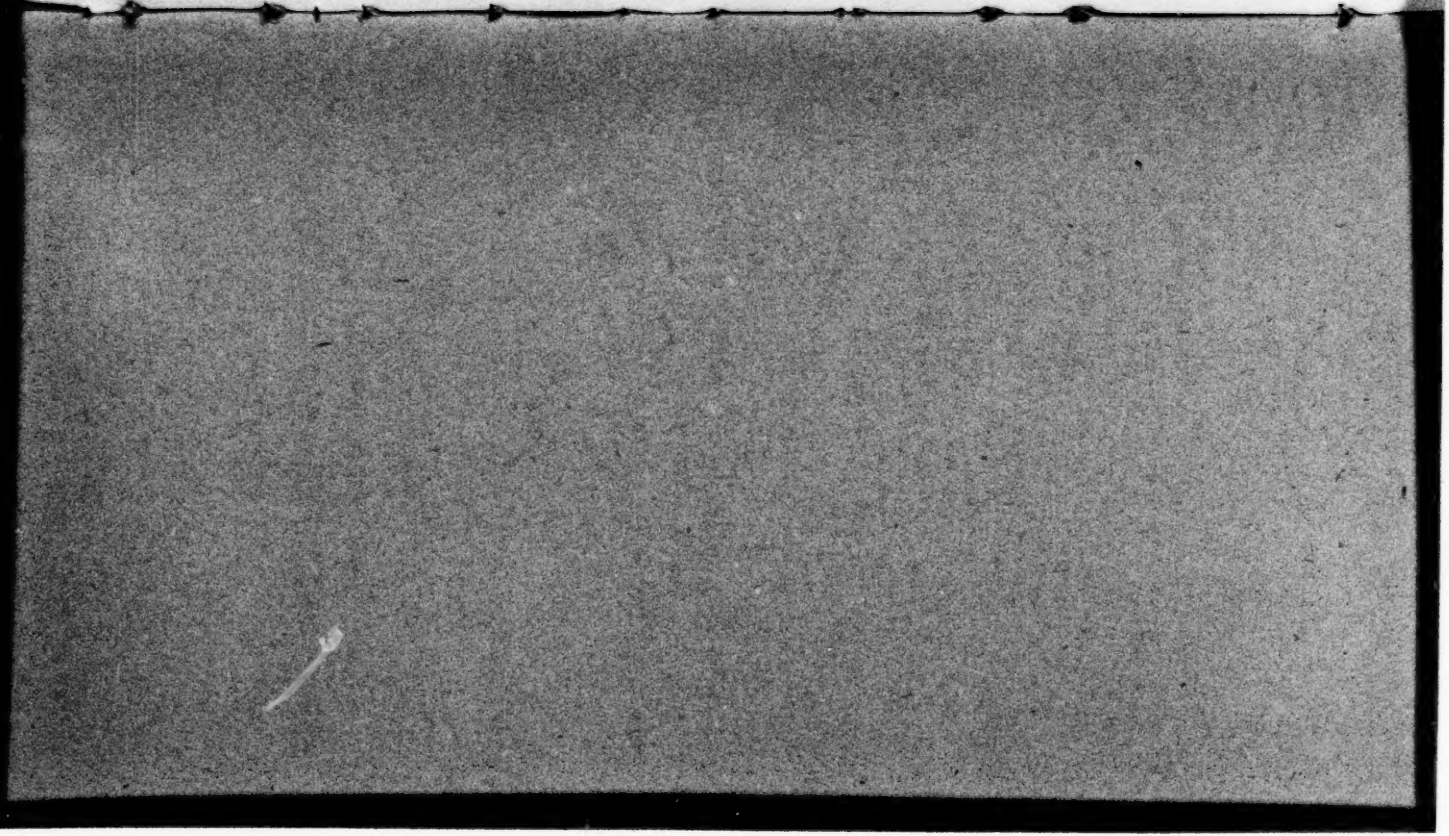

(21,249.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 193.

THE KENTUCKY UNION COMPANY, PLAINTIFF IN ERROR,

vs.

THE COMMONWEALTH OF KENTUCKY.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF KENTUCKY.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 26, 1909.

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1 THE COMMONWEALTH OF KENTUCKY:

Pleas before the Honorable the Court of Appeals of Kentucky, at the Capitol, at Frankfort, on the 25th day of March, A. D. 1908.

THE KENTUCKY UNION COMPANY, Appellant,
vs.
THE COMMONWEALTH OF KENTUCKY, Appellee.

Appeal from the Leslie Circuit Court.

Be it remembered that on the 27th day of November, 1907, the apellant by its attorney filed in the office of the Clerk of the Court of Appeals a transcript of the record, and which is in words and figures as follows, to-wit:

2 In the Leslie Circuit Court.

In Equity. No. 608.

THE COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
THE KENTUCKY UNION COMPANY, Defendant.

Schedule.

The defendant, the Kentucky Union Company, now comes and makes of this honorable court, the following request:

That the Clerk of this court copy into a transcript for the Court of Appeals of Kentucky, the entire record in this cause, saving the testimony offered upon the trial before the jury herein, to which trial the defendant objected at the time.

CLEON K. CALVERT,
Attorney for the Defendant.

On the back of the foregoing schedule appears the following: "Equity No. 608. The Commonwealth of Kentucky, Plaintiff, vs. The Kentucky Union Company, Defendant. Schedule. 1907; October 19th; filed in open court. W. G. Begley, Clerk. Cleon K. Calvert.

3 Leslie Circuit Court.

THE COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
THE KENTUCKY UNION COMPANY, Defendant.

Petition in Equity.

Plaintiff, the Commonwealth of Kentucky, by her attorney Ira Fields, Commonwealth's attorney of the thirty third Circuit Court District of Kentucky, says that on the 9th day of January, A. D.

1872, the surveyor of Perry County, Kentucky, by virtue and in consideration of 200 land warrants from the Perry County Court, of 200 acres each, surveyed for one Stephen G. Reid, forty thousand acres (40,000) of vacant and unappropriated lands then lying in Perry County, Kentucky, but now situated and lying in Leslie County Kentucky. Said lands are described as follows:

"Beginning on a white oak, black oak and rock on the top of the point between the mouth of the pounding mill branch and Rockhouse branch of Cutshin Creek of the Middle Fork of the Kentucky river; thence base line S. 55 W. 200 poles to a black pine; thence N. 35 W. 736 poles to a stake; thence S. 55 W. 1000 poles to a stake; thence S. 35 E. 336 poles to a beech on the base line; thence
4 S. 55 W. 100 poles to a beech and maple on the North side of the Middle Fork river; thence S. 35 E. 736 poles to a stake; thence S. 55 W. 460 poles to a stake; thence S. 5 E. 950 poles to a beech and elm at the mouth of Round Hold Branch of the Greasy Fork; thence N. 74 E. 2472 poles passing Bonnet Rock to a sourwood and Beech on the point below Bessie Maggard's and on the north side of Cutshin Creek; thence N. 55 E. 1000 poles to a stake; thence N. 35 W. 1672 poles to a stake; thence N. 55 E. 300 poles to a stake; thence N. 35 W. 1104 poles to a stake; thence S. 55 W. 1000 poles to a stake; thence S. 35 E. 368 poles to a stake; thence S. 55 W. 400 poles to the beginning."

Six thousand acres of land is deducted from this calculation of this boundary which is supposed to cover the patented land in this boundary of block No. 1.

Plaintiff says that afterwards and on the 12th day of June, A. D. 1872, and by virtue and in consideration of the said survey, the Commonwealth of Kentucky, by the Governor, Preston H. Leslie, and under the seal of said Commonwealth issued and delivered to said Stephen G. Reid, a grant or patent for all of said forty thousand acres of land hereinbefore described. Said grant is numbered 47,172, and same is recorded in Book of Grants No. 87, at page 431, in the records of the Kentucky Land Office at Frankfort, Kentucky, and an attested copy, under seal, of said grant is filed herewith attached hereto, referred to and made a part hereof as fully as though copied at length herein.

5 Plaintiff says further that defendant, the Kentucky Union Company, is now, and has been for more than seven years last past, a corporation, duly created and organized under and by virtue of the laws of the state of Kentucky, and by its articles of incorporation and said laws, authorized and empowered to make contracts, sue and be sued, acquire and hold real property in the state of Kentucky, all under its said corporate name, "The Kentucky Union Company."

Plaintiff says further that said defendant, the Kentucky Union Company, under, through and by virtue of divers mesne conveyances from the patentee, Stephen G. Reid, and those claiming under him, and under and by virtue of said grant for forty thousand acres numbered 47,172 is the owner and claimant of all of said forty thousand acres of land and said defendant has been such owner and claimant of all of said land for more than seven years last past, that

said defendant was such owner and claimant of said forty thousand acres of land on the 15th day of September, 1903, and on the 1st day of September, 1904, and on the 1st day of September, 1905, and on the 1st day of September 1906, that said defendant as such owner and claimant of all of said forty thousand acres of land, failed to list said land or any part thereof for taxation as of any of said dates, or for or during any of said years.

Plaintiff says that said defendant as such owner and claimant of all of said forty thousand acres of land has utterly failed to list said land or any of it for assessment or taxation for all six of the
6 above mentioned dates and for all six of the above mentioned years, and that said defendant has utterly failed to pay the taxes which should have been assessed and charged against it, as such owner and claimant of all of said forty thousand acres of land for all six of said dates above mentioned and for all six of said years above mentioned for which said assessment should have been so made, and plaintiff says that by reason of such omission to list and assess said property for taxation as of said six dates, and by reason of such failure to pay the taxes thereon for said six years, said defendant is now delinquent for all of said taxes and the plaintiff is now entitled to have all of said claim, title and interest of the said defendant, in the said forty thousand acres of land forfeited to and transferred to the plaintiff.

Plaintiff says further that neither the defendant, as such owner and claimant of all of said forty thousand acres of land nor its heirs, representatives or assigns or any one for it, did on or before March 1st, 1907, cause said land or any of it to be assessed for taxation, or pay the taxes or any part thereof which should have been assessed and charged against the defendant as such owner and claimant of said land for either or any of the five years for which assessment should have been made as of dates, September 15th, 1901, September 15th, 1902, September 15th 1903, September 1st, 1904, September 1st, 1905, nor has the said defendant or any one for it paid any of the interest or penalties provided for by law for the non-payment
7 of said taxes upon said land for said five years.

The plaintiff brings and prosecutes this suit under and by virtue of article 3 of chapter 22, entitled "An act relating to Revenue and Taxation," and which act was passed by the General Assembly of the Commonwealth of Kentucky, during the session of 1906, which was approved by the Governor on March 15th, 1906.

Wherefore, plaintiff asks for process hereon against the defendant, the Kentucky Union Company, and that it be summoned to answer herein. Plaintiff prays judgment against the said defendant forfeiting and transferring to the Commonwealth of Kentucky all of defendant's claims, title, right and interest in and to all of the foregoing described forty thousand acres of land; and plaintiff prays for a judgment against the said defendant for all of her costs herein expended, and for all proper equitable relief.

IRA FIELDS.
Commonwealth's Attorney of the Thirty-third Circuit Court, District of Kentucky.

JAMES H. JEFFRIES.
Of Counsel for the Plaintiff.

On the back of the foregoing petition appears the following: "# 608. The Commonwealth of Kentucky, vs. The Kentucky Union Company. Petition in Equity. Filed in office, summons & one copy issued to Fayette County. A copy of this petition posted up at the front door of the court house, in Hyden, Kentucky, this the 20th day of April, 1907. W. G. Begley, Clerk of the Leslie Circuit Court. Ira Fields and Jas. H. Jeffries, Att'ys."

Preston H. Leslie, Esq., Governor of the Commonwealth of Kentucky, to all to whom these presents shall come, Greeting:

Know Ye, That by virtue and in consideration of two hundred warrants from the Perry County Court, there is granted by the said Commonwealth unto Stephen G. Reid, a certain tract or parcel of land, containing forty six thousand acres, by survey, bearing date the 9th day of January, one thousand eight hundred and seventy two, lying and being in the county of Perry and bounded as follows, to-wit:

Beginning on a white oak, black oak and rock on the top of the point between the mouth of the Pounding Mill Branch and Rockhouse branch of Cutshin Creek of the Middle Fork of the Ky. River; thence base line S. 55 W. 200 poles to a black pine, thence N. 35 W. 736 poles to a stake; thence S. 55 W. 1000 poles to a stake; thence S. 35 E. 336 poles to a beech on the base line; thence S. 55 W. 100 poles to a beech and maple on the North side of Middle Fork river; thence S. 35 E. 736 poles to a stake; thence S. 55 W. 460 poles to a stake, thence S. 5 E. 950 poles to a beech and elm at the mouth of Round Hole branch of the Greasy fork, thence N. 74 E. 2472 poles passing Bonnet Rock to a sourwood and beech on the point below Jesse Maggard's and on the north side Cutshin Creek, thence N. 55 E. 1000 poles to a stake, thence N. 35—W. 1672 poles to a stake; thence N. 55 E. 300 poles to a stake; thence N. 35 W. 1104 poles to a stake, thence S. 55 W. 1000 poles to a stake; thence S. 35 E. 368 poles to a stake, thence S. 55 W. 400 poles to the beginning. Six thousand acres of land is deducted from this calculation of this boundary which is supposed to cover the patented land in this boundary of block No. 1, with its appurtenances: To Have and to Hold the said tract or parcel of land with its appurtenances, to the said Stephen G. Reid and his heirs forever.

In witness whereof, the said Preston H. Leslie, Esq., Governor of the Commonwealth of Kentucky, hath hereunto set his hand and caused the seal of the said Commonwealth to be affixed, at Frankfort, on the 12th day of June, in the year of our Lord one thousand eight hundred and seventy two, and of the Commonwealth the 81st.

By the Governor:

PRESTON H. LESLIE.
G. W. CRADDOCK,
Secretary of State.

[SEAL.]

A Copy.
Attest:
GUS. G. COULTER, *Auditor.*

On the back thereof appears the following: S. G. Reid. Grant 40,000 Acres. Perry County. Examined and Recorded. Book 87, page 431. No. 47178.

The Commonwealth of Kentucky to the Sheriff of Fayette County, Greeting:

You are commanded to summon The Kentucky Union Company to answer in 20 days after the service of this summons a petition in equity filed against it in the Leslie Circuit Court by the Commonwealth of Kentucky, and warn it that upon its failure to answer, the petition in equity will be taken for confessed, or it will be proceeded against for contempt, and you will make due return of this summons within 20 days after the service thereof to the Clerk's Office of said court.

Given under my hand as Clerk of said Court, this 20th day of April, 1907.

W. G. BEGLEY, *Clerk.*

Executed April 26-07, on the Kentucky Union Company, by delivering to Arthur Cary, its president, a true copy of the within summons.

JOHN McELROY, *S. F. C.*,
By BEN. FREEKMAN, *D. S.*

11 Leslie Circuit Court.

No. 608.

THE COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
THE KENTUCKY UNION COMPANY, Defendant.

Amended Petition in Equity.

Plaintiff, The Commonwealth of Kentucky, amends her original petition in this suit, and the prayer of said petition, and for amendment thereto, plaintiff prays judgment against the said defendant, the Kentucky Union Company, forfeiting and transfering to the Commonwealth of Kentucky, all of defendant's claim, title, right and interest in and to all of the 40,000 acre tract of land mentioned and described in the original petition herein, and plaintiff prays for a judgment herein ordering and adjudging a sale of all of the title, interest and claim of the said defendant in and to all of said 40,000 acre tract of land.

Plaintiff prays as in her original petition herein, and for her cost herein expended and for any other relief that she may appear entitled to.

IRA FIELDS,
Commonwealth's Attorney of the Thirty-third Circuit Court, District of Ky.

JAMES H. JEFFRIES,
Of Counsel for Plaintiff.

12 On the back thereof appears the following: "Equity No. 608. The Commonwealth of Kentucky, vs. The Kentucky Union Company. Amended petition in Equity. Filed in office and noted of record on Rule Day, July 1st, 1907, and copy of same posted up at the front door of the court house in Hyden, Kentucky, on said day. W. G. Begley, Clerk."

In the Leslie Circuit Court.

THE COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
KENTUCKY UNION COMPANY, Defendant.

Demurrer.

Comes the defendant, Kentucky Union Company, and demurs generally, to plaintiff's petition and amended petition herein, because same does not state facts sufficient to constitute a cause of action.

Wherefore, the defendant prays the judgment of the court.

KENTUCKY UNION COMPANY,
By W. B. DIXON, *Att'y.*

13 On the back thereof appears the following: "The Commonwealth of Kentucky, Plaintiff, vs. Kentucky Union Company. Demurrer. 1907. Sept. 2nd, filed in my office. W. G. Begley, Clerk.

In the Leslie Circuit Court.

In Equity. No. 608.

THE COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
THE KENTUCKY UNION COMPANY, Defendant.

Motion by the Defendant.

The defendant, Kentucky Union Company, comes now forth and moves the court to set aside the order in this cause made and entered on the third day of the present term of this court which order is entered on Order Book No. 4, at page 210, therein, records of this court, and further the defendant moves the court to spread of record in the order books of this court, the following order:

This cause having been submitted to the court upon the demurrer of the defendant, to the petition of the plaintiff, and
14 the court being fully advised, is of the opinion that the same ought to be, and it now is overruled.

It is therefore the judgment of the court that the general demurrer filed by the defendant herein to the petition of the plaintiff, be and the same is overruled, to which ruling of the court, the defendant excepted at the time and still excepts, and prayed an appeal to the Court of Appeals of Kentucky, which is now granted it.

Whereupon came the defendant, and in open court filed its schedule herein, directing the Clerk of this court to copy the entire record in this cause for the Court of Appeals of Kentucky.

Upon this motion, the defendant prays the judgment of the Court.

CLEON K. CALVERT,
Attorney for the Defendant.

On the back of the foregoing motion appears the following: "Equity No. 608. The Commonwealth of Ky. vs. The Kentucky Union Company. Motion. Filed in court, October 11th, 1907. W. G. Begley, Clerk.

15 *Orders. Civil Causes.*

Leslie Circuit Court, 3rd Day May Term, 8th Day May, 1907.

THE COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
KENTUCKY UNION COMPANY, Defendant.

This cause in continued.

Leslie Circuit Court, July Rule Day, July 1st, 1907.

THE COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
KENTUCKY UNION COMPANY, Defendant.

Came the plaintiff by attorney and filed its amended petition herein.

16 Leslie Circuit Court, September Rule Day, 2nd Day of September, 1907.

THE COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
KENTUCKY UNION COMPANY, Defendant.

Came the defendant by its attorney and filed a general demurrer to the petition herein and submitted on same.

Leslie Circuit Court, 3rd Day October Term, 9th Day October, 1907.

THE COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
THE KENTUCKY UNION COMPANY, Defendant.

This cause having been submitted to the court on demurrer to the petition and the court being advised, overrules same to which the defendant excepts.

17 Leslie Circuit Court, 5th Day October Term, 11 Day October, 1907.

THE COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
THE KENTUCKY UNION COMPANY, Defendant.

Came the defendant by attorney and filed a written motion to set aside the order herein entered on the third day of the present term, setting this cause down for trial before a jury, to which motion the plaintiff objected, and the court takes time to consider the motion.

Leslie Circuit Court, 11th Day October Term, 18th Day October, 1907.

THE COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
THE KENTUCKY UNION COMPANY, Defendant.

The court having considered the motion of the defendant herein filed on October 11th, 1907, to set aside the order herein made, setting this cause down for trial before a jury, is now overruled,
18 to which the defendant excepted at the time.

Leslie Circuit Court, 11th Day October Term, 18th Day October, 1907.

Equity. No. 608.

THE COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
THE KENTUCKY UNION COMPANY, Defendant.

Trial and Judgment.

This cause was regularly called on the docket for a jury trial herein, as heretofore ordered by the court, thereupon came the plaintiff by her attorney and announced ready for trial, then came the following jury, to-wit: Lee Dixon, W. N. Asher, Ben Miniard, James M. T. Huff, John Wilson, Charles Maggard, Hughes Asher, Robert Carnahan, George Brown, B. L. Huff, Sam Langdon, Billie Wilson, who qualified as legal jurors herein, and were accepted as such and were thereupon duly sworn by the court to try this cause and a true verdict render, according to the evidence, unless dismissed by the parties or withdrawn by the court.

Thereupon, the jury having heard all the evidence introduced by the plaintiff, to-wit, the evidence of the witnesses, J. M. Howard, W. G. Begley, George W. Morgan, and Allen Nantz, and also title papers and exhibits read in evidence, and the defendant not
19 having offered any evidence or testimony herein, the court gave the jury in writing, his instructions herein, and thereupon the jury rendered the following verdict:

"We the jury agree and find for the plaintiff.

W. N. ASHER, *Foreman.*

Whereupon the jury were discharged from this case and it is thereupon now adjudged by the court that the plaintiff, the Commonwealth of Kentucky, is entitled to the relief herein sought and prayed for in the petition and amended petition herein.

It is therefore adjudged by the court that all of the right, title, interest and claim of the defendant, the Kentucky Union Company, in and to the following described tract of land, be and the same is now forfeited and transferred to the plaintiff, the Commonwealth of Kentucky, and that the same shall be sold by this court's Master Commissioner as herein provided for.

Said tract of land so forfeited and transferred to the Commonwealth of Kentucky, and ordered to be sold herein, is a tract of land containing 40,000 acres, and embraced in a grant numbered 47172 issued by the Commonwealth of Kentucky to Stephen G. Reid, on the 12th day of June, 1872, upon a survey of 40,000 acres of land, dated Jan. 9th, 1872, said tract of land formerly lying in Perry County, but now, and ever since the year 1878, lying in
20 Leslie County, Kentucky, and same is bounded and described as follows:

Beginning on a white oak, black oak and rock on the top of the point between the mouth of the Pounding Mill Branch and Rockhouse Branch of Cutshin Creek of the Middle fork of the Kentucky river, thence base line S. 55 W. 200 poles to a black pine; thence N. 35 W. 736 poles to a stake; thence S. 55 W. 1000 poles to a stake; thence S. 35 E. 336 poles to a beech on the base line; thence S. 55 W. 100 poles to a beech and maple on the north side of the Middle fork river; thence S. 35 E. 736 poles to a stake; thence S. 55 W. 460 poles to a stake; thence S. 5 E. 950 poles to a beech and elm at the mouth of Round Hole Branch of the Greasy fork; thence N. 74 E. 2472 poles passing Bonnett Rock to a sourwood and beech on the point below Jesse Maggard's, and on the north side of Cutshin Creek; thence N. 55 E. 1000 poles to a stake; thence N. 35 W. 1672 poles to a stake; thence N. 55 W. 300 poles to a stake; thence N. 35 W. 1104 poles to a stake, thence S. 55 W. 1000 poles to a stake; thence S. 35 E. 362 poles to a stake; thence S. 55 W. 400 poles to the beginning.

Six thousand acres of land *is* deducted from this calculation of this boundary, which is supposed to cover the patented land in this boundary of block number one.

The Master Commissioner of the Leslie Circuit Court will make sale of the foregoing described tract of land, pursuant to the provisions and restrictions of article 3 of chapter 22 passed by
21 the General Assembly at its regular session in 1906 and signed by the Governor on March 15th, 1906, entitled, "An act relating to revenue and taxation." Said sale shall be made at the front door of the court house in the town of Hyden, Leslie County, Kentucky, on the first day of some regular term of the circuit court or county court for Leslie County, at public outcry, to the highest and best bidder, on a credit of six months, and the said commissioner may sell said tract as a whole or in parcels to suit purchasers.

He will take sale bond for the purchase price, with good surety. Before making said sale, the Commissioner will advertise the time, terms and place of sale, for at least twenty days just prior to the day of sale, by written or printed notices posted up, one at the front door of the court house aforesaid, and three others at public places in the vicinity of the said land to be sold, and he will also insert said advertisement in four consecutive issues just prior to day of sale in Thousandsticks, a weekly newspaper, printed and published in Hyden, Kentucky. Said Commissioner will also have the land sold by him appraised as required by law.

It is further ordered and adjudged herein that no advertisement of said sale shall be made under this judgment until after the close of the next regular February term, 1908, of the Leslie Circuit Court. All questions as to the allowance to the Commissioner for making said sale as well as all questions as to the distributions of the proceeds of said sale are hereby reserved for future adjudication.

22 It is further adjudged by the court that the plaintiff, The Commonwealth of Kentucky, have and recover of the defendant, The Kentucky Union Company, all the plaintiff's cost herein expended.

To the judgment of the court herein overruling the demurrer to the petition, and to the trial of this cause before a jury, and to all of the foregoing judgment and order of sale, the defendant, the Kentucky Union Company, objected and excepted at the time and still excepts thereto, and prays an Appeal herein to the Court of Appeals of Kentucky, which Appeal is now granted to the said defendant by the Leslie Circuit Court.

This cause is ordered continued and kept on this court's docket until further orders of the court herein.

STATE OF KENTUCKY,
County of Leslie, Scilicet:

I, W. G. Begley, Clerk of the Circuit Court, in and for the county and state aforesaid, do here and now and hereby certify that the foregoing 22 pages of typewritten matter is a true and correct copy of the entire record, except the testimony introduced upon the trial of this case before the jury, in case of The Commonwealth of Kentucky, v. The Kentucky Union Company, pending in the

23 Leslie Circuit Court, as appears from the records now on file in my office.

Given under my hand as Clerk aforesaid, this the 14 day of November, 1907.

W. G. BEGLEY,
Clerk of the Leslie Circuit Court.

Fee for copy, $5.60.

24 And on said date there was filed a Statement, and which is in words and figures as follows, to-wit:

25 The Court of Appeals of Kentucky.

THE KENTUCKY UNION COMPANY, Appellant,
vs.
THE COMMONWEALTH OF KENTUCKY, Appellee.

Statement.

The judgment from which this appeal is prosecuted, was rendered by the Leslie Circuit Court, at its October term, 1907, and on the 11th day of said term, and on the 18th day of October, 1907, and is to be found in this record at pages 18 to 22 therein.

No summons is required.

W. B. DIXON,
CLEON K. CALVERT,
Attorneys for the Appellant.

26 Be it remembered that at a Court of Appeals held at the Capitol at Frankfort on the 14th day of January, 1908, the following order was entered, to-wit:

Leslie.

THE KY. UNION CO.
v.
COMMONWEALTH.

Came the appellee by counsel and filed notice and agreement, and moved the Court to advance said case, and grant an oral argument, which motion is submitted.

(The notice and agreement in the foregoing order is in words and figures as follows, towit:)

27 Court of Appeals of Kentucky.

THE KENTUCKY UNION COMPANY, Appellant,
vs.
COMMONWEALTH OF KENTUCKY, Appellee.

Stipulation.

The parties hereto agree and stipulate as follows:

1. That the court is hereby requested to advance this cause on the docket.

2. That the court is hereby requested to set this cause down for an oral argument on March 10th, 1908, or as soon thereafter as convenient to the Court.

That the points and questions upon which the parties hereto desire an oral argument, are, whether or not the Commonwealth in its petition for a forfeiture of lands, under Article 3 of Chapter 22

of the Acts of 1906, must allege and state what parts of the lands sought to be forfeited enure to the benefit of claimants who have had actual, adverse pos-ession of same and paid taxes on same for the period of five years, or upon failure so to allege, whether or not the Commonwealth must allege and state that there are no such persons who have had such actual, adverse pos-ession, and paid
28 taxes on any of said land for said period of five years.

Also, whether or not the Commonwealth in said petition for forfeiture, must allege that the defendant in said suit *owns all the lands* described in said petition, or upon failure so to allege, must the Commonwealth in its petition describe accurately the lands *actually owned in fee* by the defendant, excluding from such description, the lands owned and held by occupying claimants, adversely to the defendant, under and by virtue of said Article 3 of Chapter 22 of the acts of 1906, also whether said Article 3 is *Ex post facto*, and contrary to the Constitution of the United States.

January 11, 1908.

W. B. DIXON,
Att'y for Appellant.

IRA FIELDS,
JAMES H. JEFFRIES,
Att'ys for Appelle.

29 And afterwards at a Court of Appeals held at the Capitol at Frankfort on the 15th day of January, 1908, the following order was entered, to-wit:

Leslie.

THE KENTUCKY UNION CO.
v.
COMMONWEALTH.

The Court being sufficiently advised, the motion of appellee to advance and set for oral argument is sustained and said case is ordered advanced, and set for oral argument on March 10, 1908.

And afterwards at a Court of Appeals held at the Capitol at Frankfort on the 18th day of February, 1908, the following order was entered, to-wit:

Leslie.

THE KY. UNION CO.
v.
COMMONWEALTH.

Came appellee by counsel and tendered and moved to file an additional transcript of the record herein.

And afterwards at a Court of Appeals held at the Capitol at Frankfort on the 10th day of March, 1908, the following order was entered, to-wit:

Leslie.

THE KY. UNION CO.
v.
COMMONWEALTH.

The Court being sufficiently advised, the additional record tendered by appellee is ordered filed, and said case coming on to
30 be heard was argued by J. H. Jeffries for the appellee, and L. B. Wehle, and W. B. Dixon, for the appellant, and further argument continued until tomorrow morning at 11 o'clock.

(The additional record mentioned in the foregoing order is in words and figures as follows:)

31 *Orders.*

Leslie Circuit Court, Third Day October Term, 9th Day October, 1907.

THE COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
THE KENTUCKY UNION COMPANY, Defendant.

Order.

The court having considered defendant's demurrer to the petition herein, and being advised, overrules same to which the defendant excepted at the time and still excepts.

The defendant is given leave to file answer herein during the present term of Court if it so desires, but the filing of said answer shall not delay the trial of this cause beyond this term of Court, for the reason that the defendant was duly summoned herein on April 26, 1907, and it has not heretofore offered to file any answer herein.

On motion of plaintiff this cause is set down for trial before a jury on the 4th day of the present term of Court, upon which trial
32 either party may introduce oral testimony and other competent evidence.

STATE OF KENTUCKY,
County of Leslie, set:

I, W. G. Begley, Clerk of the Leslie Circuit Court hereby certify that the foregoing one page of typewriting contains a full true and correct copy of an order of the Leslie Circuit Court made and entered of record on the third day of the regular October term 1907, in the cause then pending in said Court wherein the Commonwealth

of Kentucky was plaintiff and the Kentucky Union Company was defendant as the same appears of record in my said office.

I further certify that by oversight and mistake of the Clerk the foregoing order was omitted from the transcript of the record in said case heretofore made by said Clerk and which transcript is now on file in the Court of Appeals in said case, which is styled in the Court of Appeals the Kentucky Union Co. Appellant against the Commonwealth of Ky. Appellee.

33 Witness W. G. Begley Clerk of the Leslie Circuit Court this 7th day of February, 1908.

W. G. BEGLEY,
Clerk Leslie Circuit Court.

34 And afterwards at a Court of Appeals held at the Capitol at Frankfort on the 11th day of March, 1908, the following order was entered to-wit:

Leslie.

THE KY. UNION CO.
v.
COMMONWEALTH.

This case coming on further to be heard was further argued by W. B. Dixon, for the appellant, and submitted.

And afterwards at a Court of Appeals held at the capitol at Frankfort on the 25th day of March, 1908, the following Judgment was entered, to-wit:

THE KY. UNION COMPANY, Appellant,
vs.
THE COMMONWEALTH OF KENTUCKY, Appellee.

Appeal from the Leslie Circuit Court.

The Court being sufficiently advised, it seems to them, the judgment herein is erroneous in part.

It is therefore considered, that said judgment be affirmed in so far as it adjudges a forfeiture of the title and claim of the appellant, but for reasons indicated in the opinion herein, and because it orders a sale of the land, and not the forfeited title, said judgment is reversed, and cause remanded for proceedings consistent with the opinion herein, which is ordered certified to said court.

35 (And on said date the Court delivered the following opinion, which is in words and figures as follows, to-wit:)

36 Court of Appeals of Kentucky.

MARCH 25, 1908.

(To be Reported.)

THE KENTUCKY UNION COMPANY, Appellant,
vs.
THE COMMONWEALTH OF KENTUCKY, Appellee.

Appeal from Leslie Circuit Court.

Opinion of the Court by Judge Lassing.

This appeal presents for consideration questions as to the constitutionality of Article III. of the Revenue and taxation act, approved March 15, 1906, and of practice and procedure thereunder.

On the 20th day of April, 1907, the Commonwealth of Kentucky, by Ira Fields, Commonwealth's Attorney, in and for the Thirty-third Judicial District of Kentucky, which includes Leslie County, filed its petition in the Leslie Circuit Court against appellant, alleging, among other things, that on the 12th day of June,
37 1872, the Commonwealth of Kentucky granted to Stephen G. Reid, by letters patent, forty thousand acres of land in Perry, now Leslie County, Kentucky, a copy of the grant being filed with, and as a part of, the petition. The petition also described the land by metes and bounds, courses and distances, and alleged that the corporate defendant, appellant here, under, through, and by virtue of divers mesne conveyances, from the patentee, was the claimant of said tract of land under said patent.

The petition further alleged that appellant and its predecessors in title had failed to list said tract of land, or any part of it for assessment and taxation, as of September 15, 1901, Sept. 15, 1902, September 15, 1903, September 15, 1904, and September 15, 1905, and had so failed to list the same as of each and all of said dates; and had failed to pay the taxes charged, and which should have been charged against said tract of land assessible as of said dates, and had failed to pay such taxes assessible as of any of said dates. The prayer was for judgment against appellant, forfeiting and transferring to the Commonwealth of Kentucky, all of appellant's claims, title, right and interest in and to all of said tract of land, and for costs. By an amended petition the prayer was enlarged and asked for a sale of all the title, interest and claim of appellant in and to all of said tract of land.

Appellant appeared and filed general demurrer to the petition at September rules 1907, which was overruled at the regular October term. The appellant elected to stand on its demurrer and declined to answer. At the same term, the case was set down for hear-
38 ing and trial before a jury, and upon a verdict in favor of plaintiff, the court entered a judgment forfeiting and transferring to the Commonwealth the right, title, interest and claim of appellant in and to the said tract of land described in the petition

and judgment; and further adjudged that the title so forfeited and transferred to the Commonwealth be sold by the Master Commissioner. The judgment contains the usual provisions for a sale by a Master Commissioner, and authorizes the Commissioner to sell said tract of land as a whole or in parcels to suit purchasers.

By further provision of the judgment, the Master Commissioner was directed not to advertise the sale until after the close of the regular February, 1908, term of Court.

Complaining of errors in this judgment, appellant prosecutes this appeal.

Appellant, confessing as true the allegations of the petition, relies, for a reversal, upon the alleged unconstitutionality of the Act upon which the proceedings were based, and further claims that as the petition did not allege, nor the judgment ascertain, what parts of the forty thousand acres had been occupied, and taxes paid thereon by occupants, the petition is defective and the judgment erroneous.

The questions thus presented for determination by this court, are, (1st) is Article III, of the Revenue and Taxation Act, approved March 15, 1906, a constitutional exercise of legislative au-
39 thority; (2nd) is the judgment erroneous in that the petition fails to allege or the judgment to ascertain the various persons who had occupied and paid taxes on lands within said forty thousand acre boundary for five years next preceding the judgment of forfeiture; and, (3rd) did the court err in entering judgment of sale at the same term of Court at which the judgment of forfeiture was entered?

The constitutionality of this Article was considered and upheld by this court in an exhaustive opinion written by Chief Justice O'Rear in Eastern Kentucky Coal Lands Corporation v. Commonwealth, 32 Ky. Law. Rep., 129; 105 S. W., 260, and it is not necessary to again refer to the various objections there urged, and passed upon by the court. Upon further consideration, we are satisfied that the conclusions there reached are correct.

It is contended by appellant that under the Act of 1906, a failure to list land for assessment and to pay the taxes thereon for the years 1902, 1903, 1904, 1905, and 1906, is visited with a different and heavier penalty than was provided by law in force during those years. It is by no means certain that the Act accomplishes any such result; but if it did, it would result in making void only the penalties and interest provided for the default, and would not affect any other portion of the Act. The Act expressly provides that it is enacted in detail and that each provision shall stand by itself un-
affected by any other portion that for any reason might be
40 invalid. The Act is a comprehensive revenue measure and this result would follow had there been no such provision.

It was clearly competent for the Legislature to prescribe that the amount to be paid to remove cause of forfeiture should be the taxes, without interest or penalties, for the years named; and if, in adding penalties and interest, the Legislature exceeded its constitutional authority, the Article would be void only in so far as it exceeded such authority; and the penalty and interest would be eliminated. The penalty and interest can be stricken out and that which remains is

complete within itself, and capable of being executed in accordance with the apparent legislative intent. Similar objections were urged in Hoke v. Commonwealth, 79 Ky., 567, and Muir's Adm'r, v. City of Bardstown, 120 Ky., 739, and, in each case, where penalty was provided, the Act was held void only to the extent of the penalty imposed.

No question, however, concerning the validity of the provisions of the Act as to what penalties the appellant should pay for its delinquency during the years 1902, 1903, 1904, 1905 and 1906, arises in this case. It has not attempted either to list its lands or offered to pay any taxes, though the Act gave ample time, after it became a law, for compliance with its provisions. (Mulvey v. Boston, 83 N. E., 402; decided January 14th, 1908; Terry v. Anderson, 95 U. S., 628; Black on Tax Titles, Sections 279 to 286.) Had the appellant attempted to comply, it could then have contested or disregarded any unconstitutional provision of the Act.

As we held in the case of Eastern Kentucky Coal Lands Corporation v. Commonwealth, 32 R., 129; 106 S. W., 260; it was
41 competent for the Legislature, in the exercise of the taxing power, to provide a forfeiture for a failure to list property for assessment and pay the taxes due thereon. The penalty of forfeiture provided by the Act is not for a past delinquency, but for a failure to list and pay after the Act went into effect, and within the time there provided. We are here concerned only with this feature of the Act, and it has no semblance of an ex post facto law.

Appellant contends that, if the Act is constitutional, the petition is defective and that, the general demurrer thereto should have been sustained, because the petition fails to disclose what parts, if any, of the land described in the petition is held by occupants who have paid taxes thereupon for the five years preceding the judgment of forfeiture; and that the judgment is erroneous because it does not segregate the parts to which the forfeited title would inure.

So far as disclosed by the record, there is no part of the tract held by occupants. But the Court judicially knows, and it was admitted in argument, that practically, if not quite, all the land described in the petition is adversely held by occupants under claim or color of title. The record shows only that the appellant is the owner or claimant of the title to the tract of land, which is specifically described, by metes and bounds, courses and distances, and that appellant has failed to comply with the provisions of the Article
42 with respect to the listing of it for taxes and the payment of taxes thereon. The petition contains all the allegations necessary to show that appellant was delinquent, and its title subject to forfeiture, and the demurrer thereto was, therefore, properly overruled. Nor is the judgment erroneous on that ground. Certainly the title to the tract of land described in the petition, and which is adjudged to be subject to forfeiture and sale, can be sold by the same description, the purchaser taking that which, under the Article, passes at the sale. The doctrine of caveat emptor applies in this, as in other proceedings. And the purchaser, and not the occupant, as argued by counsel for appellant, would be required to show, in actions to recover under his purchase, that the land claimed by him

was not of the excluded class. The rule is universal that where one seeks to recover under a grant or deed which does not convey all the land within the boundary described, he must show that the land sought to be recovered is within the boundary and without the exclusions. (Hall v. Martin, 89 Ky., 9.)

The Act provides that the deed shall transfer to the purchaser the title and claim:

"So forfeited and transferred to, and vested in, the Commonwealth, as remains in it after the operation of Section Six of this Article, and shall so recite."

The Article, taken as a whole, clearly shows that such was the legislative intent. It is not necessary for the petition to de-
43 scribe more than the tract of land the title to which is sought to be forfeited.

After the judgment of forfeiture becomes final, the main purpose to be conserved is the interest of the Commonwealth, and circumstanes might arise or be shown to exist, that would authorize different modes of executing it. We have no hesitancy in holding that it is not necessary for the judgment to ascertain and describe the parts of the tract held by occupants. If, at the hearing it should be made manifest that the title as to certain parts only of the tract would pass to the purchaser under a sale, the statute would be complied with by a sale of the title covering those parts alone. In any event, it is the duty of the Court to prescribe what parts thereof shall be sold, if less than the whole is to be sold. Therefore, the judgment appealed from, in so far as it authorizes the Commissioner to sell the tract as a whole or in parcels to suit the purchaser is erroneous.

Another error in the judgment of sale is that it was rendered at the regular October term, 1907, of the Leslie Circuit Court, the term at which the judgment of forfeiture was entered.

By Section Four of Article III., it is provided that "if before or during the term of Circuit Court, next succeeding the term at which a judgment of forfeiture may have been entered," the defendant in privity with the title so vested in, and forfeited to, the
44 Commonwealth, should file his counter-claim, accompanied by bond, and ask to be allowed to purchase back the property, he should be allowed to do so upon the terms prescribed in the Article. The defendant, by the express provisions of the Act, has until the close of the first term of court after the term at which the judgment of forfeiture is entered, in which to file this petition; and it was error for the Circuit Court to order a sale of the property before the time had elapsed in which the defendant could file his petition and bond to purchase back the property. It is insisted that this premature entry of the judgment of sale is not error because it becomes inoperative if the defendant should, within the time authorized by the Act, file its petition to purchase the property back. But the judgment of the court was a final order from which an appeal could be, and now is being, prosecuted; and the circuit court had no control over it, after final adjournment of the term at which it was entered. The judgment of sale, therefore, was erroneous.

It is earnestly insisted that the Article in question is a repeal to a certain extent, at least, of the statute against Champerty. But in

this, we do not concur. The purchaser, in an action to recover the land, or part thereof, would still be required to prove his chain of title, as if there had been no forfeiture or sale. The utmost that could be claimed is that the Commissioner's deed made pursuant to a judgment of court, is not ordinarily subject to the provisions of the statute as against Champerty. Conceding this to be true, the only link in the chain of title against which the plea of Champerty
45 could be interposed, would be the Commissioner's deed made pursuant to the sale directed by the judgment; and this plea would not extend to any link in the chain of title antecedent to the Commissioner's deed. But, is the Commissioner's deed, made under this Article, subject to the plea of Champerty?

In Section Three of the Article in question, it is provided that:

"No other title, claim, or possession, or continuity thereof, whether owned or claimed by the defendant or by others, shall be forfeited, or in any manner affected by said proceeding."

And by Section Four of the Article, it is provided that:

"No person except a defendant, and no defendant except as herein provided, shall be allowed to purchase back from the Commonwealth, the title so forfeited to, and vested in, it, except such defendant as may, but for such forfeiture, establish in such proceeding, a title thereto in himself, upon which he could maintain an action of ejectment."

As was stated in Farmers' Bank of Kentucky v. Peter, 13 Bush., 591:

"The purchaser takes what he gets. The rule of caveat emptor applies in all its vigor to sale- of real property."

46 The sale referred to, being a sale by a commissioner under decree of court.

From the provisions of the Act above quoted, it is manifest that it was not the intention of the Legislature to take from an occupant any defense that he might theretofore have had, whether of Champerty or otherwise. It is expressly stated, that no title, claim, pos-ession, or continuity thereof, by whomsoever owned, shall, in any manner, be affected by said proceeding. We are, therefore, of the opinion, that the benefit of the plea of Champerty is not only not taken from the occupant, but it is preserved to him as against the Commissioner's deed itself, and that such deed does not come within the general rule that the plea of Champerty is not available as against a Commissioner's deed.

In Commonwealth v. Rosenfield Bros. & Co., 118 Ky., 374, the court, quoting from Endlich on Interpretation of Statutes, Section 295, says:

"Where the language of a statute, in its ordinary meaning and grammatical construction leads to manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. This is done sometimes by giving an unusual meaning to particular words, sometimes by altering their collocation, or by rejecting them altogether, or by interpolating other words—under the influence, no doubt, of an

47 irresistible conviction that the Legislature could not possibly have intended what its words signify, and that the modifications thus given are mere corrections of careless language, and really give the true intention. The ascertainment of the latter is the cardinal rule, or rather the end and object of all construction; and where the real design of the Legislature in ordaining a statute, although it be not precisely expressed, is yet plainly perceivable or ascertained with reasonably certainty, the language of the statute must be given such a construction as will carry that design into effect, even though in so doing the exact letter of the law be sacrificed, or though the construction be, indeed, contrary to the letter."

This rule is re-enunciated in an opinion of this court by Judge Barker, filed March 17, 1908, in the case of Morrell Refrig. Car Co. v. Commonwealth of Kentucky. If it were possible to construe the Act in question as contended for by appellant, with respect to Chamerty, which we do not hold, the rule announced by this court in the above cases would preclude such a construction. But there is nothing in the Act indicating such an intention upon the part of the Legislature. Its whole purport is to the contrary, and by specific provision, it declares that the title, claim, or pos-session of the occupants, or the continuity thereof, should not, in any manner, be affected by the proceedings.

If the occupant has had five years' pos-session, coupled with the payment of taxes, the forfeited title devolves upon him; if he
48 has not had pos-session for a sufficient length of time to cause a vestiture of title in him, he nevertheless is in pos-session; and as a sale of the forfeited title to the extent of his pos-session would be champertous, the title thereto remains in the Commonwealth, and the pos-session of such occupant, or the continuity thereof, is not in any manner affected thereby. The title to those parts not transferred to the occupant, or which is not adversely held, is alone the subject of sale, and the title to only such parts would pass upon a sale in gross.

The judgment is affirmed in so far as it adjudges a forfeiture of the title and claim of appellant, but for the reasons indicated and because it orders a sale of the land and not of the forfeited title, it is reversed for proceedings not inconsistent with this opinion.

Whole Court sitting.

W. B. Dixon, Louis B. Wehle, Cleon K. Calvert, For Appellant.
Ira Fields, James H. Jeffries, For Appellee.

49 And afterwards at a Court of Appeals held at the Capitol at Frankfort on the 26th day of March, 1908, the following order was entered, to-wit:

Leslie.

KY. UNION COMPANY
v.
COMMONWEALTH.

Judge Hobson delivered a dissenting opinion herein, which is as follows:

50 Court of Appeals of Kentucky.

MARCH 26, 1908.

KENTUCKY UNION COMPANY, Appellant,
vs.
THE COMMONWEALTH OF KENTUCKY, Appellee.

Dissenting Opinion by Judge Hobson.

For the reasons given in the dissenting opinion filed this day in the case of Eastern Kentucky Coal Lands Corporation vs. The Commonwealth of Kentucky, I dissent from the opinion of the court herein.

W. B. Dixon, O. A. Wehle, C. K. Calvert, For appellant.
J. H. Jeffries, For appellee.

51 The dissenting opinion by Judge Hobson, in the case of The Eastern Ky. Coal Lands Corporation v. Commonwealth, referred to in the dissenting opinion in this case is in words and figures as follows:

52 Court of Appeals of Kentucky.

MARCH 26, 1908.

EASTERN KENTUCKY COAL LANDS CORPORATION, Appellant,
vs.
THE COMMONWEALTH OF KENTUCKY, Appellee.

Dissenting Opinion by Judge Hobson.

When an act is not punishable under the law in existence when it is done, it cannot be made punishable by the Legislature by a law subsequently passed; and upon like principles, where an act is punishable in a certain way when it is done, the Legislature cannot by a subsequent law add to the punishment or penalty. The Legislature cannot deny to any one the equal protection of the laws; and in my judgment article three of the Revenue Act of 1906 is void, both on the ground that it is *ex post facto* legislation, and that it denies to the holders of land titles referred to the equal protection of the laws.

The act was approved March 15, 1906. It took effect about ninety days thereafter. The first section of the act makes it the duty
53 of every owner or claimant of land to pay all the taxes which had been assessed or should have been assessed against him or those under whom he claims, as of the 15th day of September 1901, 1902, 1903, 1904, and 1905. And if it had not been assessed for any of these years, the act made it his duty to assess the land and pay the taxes, interest and penalty therein provided for. His failure to do this is made a cause for the forfeiture of his title, but this forfeiture

shall be extinguished if on or before March 1st, 1907, he lists the land and pays the taxes with the interest and penalties provided by law in case of the redemption of land sold for the nonpayment of taxes. When land is sold for the nonpayment of taxes, a penalty of fifteen per cent is added, and the taxes bear interest at the rate of ten per cent. So that, the meaning of the act is that the owner of the land who had failed to list it for the years named must list it after the act takes effect and pay a penalty of fifteen per cent, also interest on the taxes at ten per cent per annum from the time he was delinquent, that is, from the time the land should have been assessed. By the law in force up to the time this act took effect, the owner of land which had been omitted from assessment might voluntarily have it assessed at any time and pay the taxes
54 without interest or penalties. If he failed to list it voluntarily, and a proceeding was instituted against him under section 4241 of the Kentucky Statutes, he was liable to a penalty of twenty per cent, which went to the officer instituting the proceeding; but, even in this case, he was not liable for interest at ten per cent on the taxes; and if he made the assessment voluntarily without a proceeding being instituted against him, he was not liable for the penalty of twenty per cent. While the act gives him until March 1, 1907, to list his property and pay the taxes, from the moment the act took effect the only way that he could escape the forfeiture of his title was to pay not only the taxes but the interest and penalty. The act does not give him a certain length of time to list his property and provide that if he fails to list within that time he shall be subject to the penalty, but it imposed the penalty upon all who are delinquent in listing their land and who would escape the forfeiture of their title by listing it after the act takes effect. It is said that so much of the act as imposes the penalty for the past delinquency may be rejected, and that the balance of the act may stand; but this is not a case in which that rule can be applied,—for the rea-
55 son that the act forfeits the title of all persons who had failed to list their land for the years named, and the only way in which they can escape the forfeiture is by paying the taxes with interest and penalty. If they do not pay the taxes, interest and penalty, the forfeiture stands. If that part of the act which provides for the extinguishment of the forfeiture is invalid, then there is no way in which the owner can escape the forfeiture. Besides, this is an essential part of the whole scheme of the act, and it cannot be presumed that the Legislature would have passed the act without this. The forfeiture of the titles of the owners is the purpose of the act. There could not be a clearer case of Legislative intention to punish retrospectively.

By the general law the person owning land at the time it should be assessed is not only liable for the taxes but remains bound therefor; by this article the present owner's land is forfeited to the Commonwealth for the non-payment of taxes by the former owner. By the general law if the occupant of lands pays the taxes thereon, he is entitled to recover of the owner the amount so paid with interest, and has a lien on the land therefor; by this article, the fact that the land has been listed for taxation and the taxes paid by the occu-

pant, does not prevent the forfeiture as therein set out. By the general law land may be assessed retrospectively at any time not
56 later than five years but not to prejudice the rights of purchasers acquired in the mean time; by this article the purchaser is required to pay the taxes with interest and penalty. By the general law if the owner sells the land after the first of February of the year in which the taxes are due and payable, it is the duty of the owner to pay the taxes; by this article the purchaser's title is forfeited if he does not pay them. By the general law where property has been sold for taxes, the owner may redeem it within two years; by this article the owner forfeits his title to the land if he fails to assess it and pay the taxes thereon as therein provided. By the general law if the owner fails to assess his property, it may be assessed retrospectively, but the taxes are then collected as other taxes; by this article the taxes are not collected as other taxes, but must be paid at once with interest and penalties to avoid a forfeiture of the title. By section four of this article, before the defendant may redeem, he must pay not only the amount of unpaid taxes charged, but those that ought to have been charged against those under whom he claims for fifty years preceding the filing of the counterclaim. No such provision is found in the general law relating to other property, and there is no provision in the general law for double taxation of the same property, and the payment of the taxes by each claimant where there are two claimants to it.

57 A reading of the article shows that it was a deliberate attempt on the part of the Legislature to deny the equal protection of the laws to the owners of the land titles referred to, and to provide as to the holders of these land titles an entirely different system from that provided for the holders of other species of property. It is therefore in my judgment void both under the Constitution of this State and the Constitution of the United States.

For these reasons I dissent from the opinion of the Court.

Wm. J. Hendrick, Hoppen & Berard, Hazelrigg, Chenault & Hazelrigg, Jno. H. Hendrick, R. L. Miller, for appellant.

Hager & Stewart, T. H. Paynter, W. H. Wadsworth, D. W. Baird, Z. T. Vinson, E. W. Hines, C. C. McChord, N. B. Hays, Att'y Gen. C. H. Morris, for Appellee.

58 And afterwards at a Court of Appeals held at the Capitol at Frankfort on the 24th day of April, 1908, the following order was entered, to-wit:

Leslie.

THE KY. UNION COMPANY
v.
COMMONWEALTH.

Came the appellant by counsel and filed a petition and moved the Court to grant a rehearing, which motion is submitted.

(The petition mentioned in the foregoing order is in words and figures as follows, to-wit:

59 Court of Appeals of Kentucky, January Term, 1908.

KENTUCKY UNION COMPANY, Appellant,
vs.
COMMONWEALTH OF KENTUCKY, Appellee.

Petition for Rehearing.

May it please the Court:

At the outset we wish to call attention to the following holding of the United States Supreme Court, given on February 24, 1908:

"It is well settled in this court that it is too late to raise Federal questions, reviewable here, by motion for re-hearing in the state court. * * * An exception to this rule is found where the supreme court of the state entertains the motion and expressly passes upon the Federal question." (Disconto Gesellschaft v. Umbreit.)

We presented as our only contention against the validity of Article III of the Revenue Law of 1906 that it violates the ex post facto prohibition in Clause 1 of Section 10 of Article 1 of the Constitution of the United States. We prayed for a reversal of the Leslie Circuit Court upon that ground alone, and we expressly waived both in brief and in argument the right to have the
60 case reversed upon any other ground. We, furthermore, expressly prayed in our brief on appeal (page 38) that if this court should affirm the judgment of forfeiture it would "show by its opinion that the law is not in violation of the Constitution of the United States." In view of the emphasis which we placed upon this request it was with great surprise that we found that the opinion of this court contains no mention whatever of the fact that the question of ex post facto raised by our appeal is a Federal question. This omission was surely due to an oversight, for it is the policy of this court, and all other State courts, to promote the fullest hearing of any question raised under our Federal Constitution. We now come again to this court and earnestly ask that it will allow the record in this case to show that a Federal question was raised, so that our client may take a writ of error to the Supreme Court of the United States. But the mere filing into the record of this petition for a rehearing will not give jurisdiction to the Supreme Court unless, in overruling it, this Court will hand down an opinion expressly stating that it has considered the ex post facto question, or any other question raised in this petition, as a question arising under the Constitution of the United States. We file this petition seriously for a re-hearing, but we do most earnestly call the court's attention to our request in case it should deny a rehearing.

Your petitioner, Kentucky Union Company, prays that this court will grant to it a rehearing of its appeal with reference alone to the validity, under the Constitution of the United States, of Ar-
61 ticle three of Chapter 22 of the Acts of 1906 of the General Assembly of Kentucky. The sole legal contention upon

which the appeal was argued and briefed by the attorneys for the appellant was the contention that the aforesaid Article III violates the Constitution of the United States, being an ex post facto law. There are other grounds under the Federal Constitution upon which we relied for a reversal, but, owing to the thorough treatment which had been given to these grounds upon the presentation of the case of Eastern Kentucky Coal Lands Corporation v. Commonwealth, which had been but recently argued before this court, we did not lay emphasis upon them; but we shall briefly state them in this petition.

I. Article III of the revenue law is ex post facto in violation of the Constitution of the United States.

We contend, first of all, that article III of Chapter 22 of the laws of 1906 of the General Assembly was passed in violation of Article 1, Section 10, Clause 1 of the Constitution of the United States, which is as follows:

"No State shall enter into any treaty, alliance or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; mak*ing* anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility."

The Article of the Revenue Law in question violates the
62 above quoted clause of the United States Constitution for the reason, as we contend, that it is an ex post facto law. We believe that there can be no logical escape from this contention. The definition of an ex post facto law, within the meaning of clause one, Section 10, Article 1 of the Constitution of the United States has been so clearly enunciated in the cases which we cited to this court on the hearing of the appeal that, after the bare reading of these cases without further argument, the Article III in question should stand convicted in this court of transgressing the Federal prohibition. As pointed out by Judge Hobson in his dissenting opinion in this case on the appeal: "By the law in force up to the time this act took effect, the owner of land which had been omitted from assessment might voluntarily have it assessed at any time and pay the taxes without interest or penalties. If he failed to list it voluntarily, and a proceeding was instituted against him under 4241 of the Kentucky Statutes, he was liable to a penalty of twenty per cent, which went to the officer instituting the proceeding; but even in this case he was not liable for interest at ten per cent. on the taxes, and if he made the assessment voluntarily without a proceeding being instituted against him, he was not liable for the penalty of twenty per cent." Article III of the Revenue Law of 1906, acting retrospectively upon failures to list for taxation in certain past years, which failures, at the time of their commission, carried with them only the burdens and penalties mentioned by Judge Hobson, now at-
63 taches to those past failures to list the penalty of forfeiture of the title of the delinquent; which forfeiture can be averted only by the payment of the taxes, together with "interest" (30 per cent.) and a penalty of 15 per cent.

"Where an act is punishable in a certain way when it is done, the

Legislature can not, by a subsequent law, add to the punishment or penalty," says Judge Hobson in his dissenting opinion. This is the reason upon which we based our contention on appeal. Both the provision for forfeiture and the provision for averting it attach a greater penalty to the acts of failure to list in past years than the doer of those acts was able to contemplate at the time he became guilty of them. For that reason, this court should, we submit, enforce the prohibition of the Federal Constitution and save the individual citizen from the effects of such State legislation. In view of Calder v. Bull, 3 Cranch, 386; Kring v. State of Missouri, 107 U. S. 221; Fletcher v. Peck, 6 Cranch, 87; Cummings v. Missouri, 4 Wallace, 277, which cases were cited to this court in the presentation of this appeal, we believe that there is no doubt as to what would be the holding of the Supreme Court of the United States with respect to both of the provisions of the Article in question. The argument was made at the hearing of this case, and it finds place in the opinion of this court, that, even admitting the unconstitutionality of that part of the provision which relates to the penalty and interest, the Kentucky Union Company does not stand in a position where it may complain of that provision, for the reason that it did not attempt to comply with so much of that provision as is consti-
64 tutional. The complete answer to that argument is this: The payment of the unconstitutional penalty and interest is an act required of the delinquent owner, together with the payment of his back taxes, as a condition precedent to his extinguishing the "cause of forfeiture" hanging over him. He had the right to ignore the mandate of the Statute requiring him to list and to pay his tax, if the Statute inseparably coupled with that requirement the requirement that he pay penalties which the Constitution of the United States says he shall not be subjected to. The legal requirement and the unconstitutional requirement are inseparable parts of the course which the owner must pursue to save himself from the forfeiture. There is no canon of Constitutional Law which would require an individual himself in such a case to construe the law, and at his peril to tender performance of such of the required acts as are legal, and leave undone such of the acts as the State had no power to require.

II. The statute violates section 1 of the Fourteenth Amendment of the Constitution of the United States, in that it provides for the divestiture of title from an owner without due process of law.

Section 1 of the Fourteenth Article of the Amendments to the Constitution of the United States provides:

65 "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Article III of the Revenue Law of 1906 ignores due process of law in at least three distinct ways.

First. The Article of the Revenue Law in question violates the requirement of due process in this: that it takes away from persons under disability all extension of time for setting up their rights in court, and makes no provision for constructive service upon them. We believe and contend that provisions to ensure service upon persons legally qualified to protect the interests of infants and insane persons, or for granting of time beyond the expiration of the period of disability for the recognition of the rights of infants and insane persons, is a part of the due process, without which no State may work complete divestiture of title from such persons.

Second. It declares that an owner's failure to list his land for taxation in those past years is at once a cause for forfeiture. The forfeiture itself, then, became complete in effect from the
66 moment the statute went into effect, subject simply to the condition subsequent that the owner shall come with his petition to list and his tender of taxes, "interest" and penalties. The forfeiture proceeding to be instituted by the Commonwealth's Attorney in case the owner has not availed himself of the condition subsequent in his favor is a proceeding in which the only issue is the one issue of fact as to whether or not the owner has listed his lands for the years in question. And yet, until the institution of the forfeiture action by the Commonwealth, there is absolutely no constructive notice given to an owner out of the jurisdiction. In other words, the non-resident delinquent owner, who is a person entitled to the protection of the Fourteenth Amendment, and who could not have constructive notice of the passage of the law, is given just this consideration: he is notified constructively of the existence of a complete cause of forfeiture existing against him, from which there can be no escape, but which will, by the means of a judgment, be almost automatically converted into a complete forfeiture. To complete this unique treatment of the unfortunate non-resident, or the unfortunate "unknown defendant," it is even provided in this act that to a judgment against him under this act the provisions of Section 414, which give five years to a person constructively summoned, to reopen a judgment, shall not apply.

Third. Under Article III, Section 6 of the Revenue Law,
67 it is provided that the claim to such part of the delinquent owner's land as has been occupied for five years by a tax-paying occupant shall not be forfeited and shall be vested in such occupant. The Statute, in providing for the sale of the forfeited title or claim, provides no means for such an identification or description of the land, nor for such an ascertainment of the holdings of five-year-tax paying occupants as would enable a purchaser to know what is being offered for sale, and so justify a purchaser in offering a price commensurate with the value of the land to which the State will give title under the sale. Consequently, the provision that the balance left from the proceeds of sale after payment from them of the taxes, penalties and costs, is to be paid over to the delinquent owner, is practicaly a nugatory provision.

It is due process to sell the title of a delinquent for back taxes if the proceeding contemplates notice and a day in court for the

defendant, but the requirements of due process, we contend, do not stop there. A judicial sale in pursuance of such a proceeding may not, by its form and intention, slaughter the interest of an unsuccessful or defaulted defendant in the property which is to be subjected to sale. It is an essential part of due process of law, we contend, that a judicial sale shall be a bona fide and reasonable proceeding by an officer of the court to get a fair price for the property, which he is to sell under order of the court. To that end it
68 has ever in the history of English Law been a rule that the order of sale must describe the property that is to be sold. A judicial sale, in any case, is simply a means by which the state converts a piece of property into money in order that the successful plaintiff may be given the amount adjudged due from the defendant. The judicial sale that is to follow upon a judgment of forfeiture and order of sale under a forfeiture statute must, we believe, be subjected to this test; it should be as considerate of the rights of the defendant as a provision for judicial sale under a judgment enforcing a lien. In the forfeiture statutes of Virginia and West Virginia, which furnished the suggestion for Article III, the sale does satisfy this test of due process. But the Kentucky Statute, while purporting to provide for a judicial sale, provides, under color of judicial proceeding, for a confiscation of which the state does not even get the benefit. Such an abrogation of private property rights unquestionably violates the due process which the Federal Constitution demands.

III. Article III violates Section I of the Fourteenth Amendment of the Constitution of the United States in that the State of Kentucky in enforcing it would be denying to some persons within its jurisdiction the equal protection of the laws.

69 We shall not undertake to repeat under this statement the arguments which have already been amply presented to this court in the recent cases coming up under the Revenue Law of 1906. We shall briefly mention what we consider the most flagrant violation contained in Article III of the obligation upon the State to give all persons the equal protection of the laws. Following is part of Section 3 of Article III:

"Judgment rendered by the Circuit Court under this Article shall be conclusive as against all defendants, including infants, lunatics, and married women, as to their title or claim derived through, or under the grant, title or claim described in the petition; and said judgments and the proceedings upon which they are based shall not be subjected to the provisions of Section 391, 410, 414 or 574 of the Civil Code of Practice."

Section 391 provides that an infant may, within twelve months after attaining majority, show cause against a judgment. Section 410 provides for the giving of bond by the successful plaintiff where the process on the defendant was by constructive summons, which bond is to protect such defendant in case of his appearing and obtaining a modification or setting aside of the judgment. Section 414 gives to such a defendant, against whom a judgment has been rendered, five years within which to reopen and have the case retried. Section 574 provides that depositions may not be taken on

notice, but must be taken upon interrogatories, wherever all the parties against whom it is to be read have been constructively
70 summoned, or are defendants under disability.

It is plain that to deprive persons constructively summoned, or persons under disability, who have rights in lands not listed, of the safeguards given by the laws of the State—and to leave those safeguards in force concerning all other such persons—is a denial by the State of Kentucky to the persons so deprived of the equal protection of the laws. Here, then, is another respect in which the eager framers of this remarkable piece of legislation elected to make their law more drastic than the law of West Virginia, which they evidently intended at first to follow. That statute of West Virginia, as will be seen from the report of the case of King v. Mullins, in 171 U. S., at page 419, expressly gives persons under disability three years after the removal thereof, within which time they may redeem their interest in the land by the payment of the taxes and interest. We believe that there is no question that this error alone renders the act unconstitutional upon this ground of denial of equal protection of the laws, although there are other serious grounds, which have been argued before in this court, and which we believe to be sound.

IV. Article III of the Revenue Law of 1906 is a law impairing the obligation of a contract in violation of Clause 1 of Section 10 of Article I of the Constitution of the United States.

71 The contract to which we refer is the compact between the States of Virginia and Kentucky. We shall not seek, here to repeat the arguments in support of this contention, but we wish to state it as a serious ground for a rehearing in this case.

In conclusion, we repeat the prayer with which we began:

If the Court overrules this petition for a rehearing we ask that it will hand down an opinion stating that its decision is based upon its finding that article III of chapter 22 of the Acts of 1906 does not violate the Constitution of the United States.

Respectfully submitted,

WM. B. DIXON,
LOUIS B. WEHLE,
Attorneys for Appellant.

72 And afterwards at a Court of Appeals held at the Capitol at Frankfort on the 22nd day of May, 1908, the following order was entered, to-wit:

Leslie.

THE KY. UNION COMPANY
v.
COMMONWEALTH.

The Court being sufficiently advised, it is considered that the motion and petition of appellant for a rehearing, be and the same is overruled. Response filed.

(The response to the petition for rehearing mentioned in the foregoing order is in words and figures as follows to-wit:

73 Court of Appeals of Kentucky.

MAY 22, 1908.

(To be Reported.)

KENTUCKY UNION COMPANY, Appellant,
vs.
COMMONWEALTH OF KENTUCKY, Appellee.

Appeal from Leslie Circuit Court.

Response to Petition for Re-hearing, by Judge Lassing.

Complaint is made in the petition for re-hearing that the opinion herein fails to state whether or not article three of chapter twenty-two of the Acts of 1906 violates the Constitution of the United States. This question was fully considered and passed upon in the recent case of the Eastern Kentucky Coal Lands Corporation v. Commonwealth, 32 Ky. Law Rep., 129, and it was there held that the said article was not violative of any of the provisions of the Constitution of the United States. It is specifically urged that article three violates section ten of article one of the Federal Constitution, in that it impairs the obligations of a contract, and the compact with Virginia is cited as the contract claimed to have been impaired.

74 Complaint is also made that said article violates section one of the Fourteenth Amendment in that it deprives the owner of his property without due process of law, or that it denies to some persons the equal protection of the law, and also that it is violative of clause one, section ten, article one of the Federal Constitution, which denies the right of any state to pass an ex post facto law. In none of these contentions do we concur. We see no reason for receding from the conclusions reached upon these several points in the case of the Eastern Kentucky Coal Lands Corporation v. Commonwealth, above cited.

There can be no serious objection to article three on the ground that it is an ex post facto law, in so far as the said article applies to years subsequent to 1906. But, it is insisted that as the act declares that delinquency for the years 1902, 1903, 1904, 1905 and 1906, shall be cause for forfeiture, which might have been removed on or before January 1st, 1907, by the payment of the taxes and interest and penalties provided by law for the redemption of land sold for the non-payment of taxes, it visits upon the delinquent greater penalties than he was subject to prior to the passage of the Act.

This would be true if the delinquent had voluntarily paid the taxes for those years; but the result is not necessarily the same had the delinquent been proceeded against by an officer authorized by law to collect back taxes; however we are of opinion that the delinquent's liabilities for those years are to be measured by his liabilities had he volunteered to list and pay his taxes. It,

75 therefore, follows that the article in so far as it requires the payment of interest and penalities for the years 1902, 1903,

1904, 1905 and 1906 is inoperative, and the delinquent for those years would be required to pay only taxes, without interest or penalties. But, for the reasons and upon the authorities cited in the opinion and consistent with the rulings of this court, the elimination of the interest and penalties for the years 1902, 1903, 1904, 1905 and 1906, does not affect the other provisions of the article with respect to those years, or years subsequent thereto.

As the appellant is under no disability, does not claim under a grant from the State of Virginia, and did not seek to list its property, or offer to pay the taxes for the years 1902, 1903, 1904, 1905 and 1906, either with or without interest and penalties, we hesitated in the opinion to pass specifically upon these questions raised by it. However, out of the consideration entertained for the eminent counsel presenting them we have expressed our views upon these points, in order that he may have the benefit of specific adjudication thereon.

The petition for re-hearing is overruled.

W. B. Dixon, L. B. Wehle, C. K. Calvert, for Appellant.
J. H. Jeffries, Ira Fields, for Appellee.

76 Be it remembered that on the 9th day of June, 1908, there was filed in the office of the Clerk of the Court of Appeals, an Assignment of Errors, and which are hereto attached and are as follows:

77 **Court of Appeals of Kentucky.**

KENTUCKY UNION COMPANY, Plaintiff in Error,
vs.
COMMONWEALTH OF KENTUCKY, Defendant in Error.

Assignment of Errors.

Now comes the said plaintiff in error, Kentucky Union Company, and feeling itself aggrieved by the findings and judgment of the Court of Appeals of Kentucky in the above entitled cause, *comes* by its counsel and assigns the following errors thereto, to-wit:

I.

The said Court erred in holding that the provisions of Article 3 of Chapter 22 of the Acts of the General Assembly of the Commonwealth of Kentucky, passed at its regular Session in the year 1906 being a part of an Act entitled "An Act relating to Revenue and Taxation" in so far as said provisions provide for the forfeiture of the title to land for the failure to list and pay taxes thereon for the years 1901, 1902, 1903, 1904 and 1905 or any three of such years, was not contrary to and in violation of Section 10 of Article 1 of the Constitution of the United States which provides: "No State shall * * * pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts."

II.

The said Court erred in failing to hold that the said provisions of the said Act in so far as they provided for the forfeiture of the title to land for the failure to list and pay taxes thereon for years prior to the passage of said Act were *ex post facto* and void because
78 in violation of Section 10 of Article 1 of the Constitution of the United States.

III.

The said Court erred in holding that the provisions of said Act do not impair the obligation of a contract and do not violate the Constitution of the United States for that reason.

IV.

The said Court erred in holding that the said provisions of said Act do not deprive plaintiff in error of its property without due process of law and is not in violation of Section 1 of the 14th Amendment of the Constitution of the United States.

V.

The said Court erred in holding that by the said provisions of said Act the plaintiff in error is not denied the equal protection of the laws and in holding that said provisions do not violate Section 1 of the 14th Amendment of the Constitution of the United States which provides that no state shall deny to any person within its jurisdiction the equal protection of the laws.

VI.

The said Court erred in deciding and adjudging that the judgment of the Leslie Circuit Court be affirmed in so far as it adjudges a forfeiture of the title and claim of appellant to the land.

W. B. DIXON,
Counsel for Plaintiff in Error.

Filed June 9, 1908.
NAPIER ADAMS,
Clerk Court of Appeals of Kentucky.
ED. C. O'REAR,
Chief Justice Court of Appeals of Kentucky.

79 And on said date there was filed in the office of the Clerk of the Court of Appeals a Petition for a Writ of Error, and which is attached hereto and is as follows:

80 Court of Appeals of Kentucky.

KENTUCKY UNION COMPANY, Plaintiff in Error,
vs.
COMMONWEALTH OF KENTUCKY, Defendant in Error.

Petition for Writ of Error.

The above named, the Kentucky Union Company, complains and alleges that in the above entitled cause on the 25th day of March,

A. D., 1908, and the 22nd day of May, A. D., 1908, the said Court of Appeals of Kentucky, being the highest Court of the State of Kentucky and the Court of last resort of said State for the hearing and determination of the said cause rendered final judgment against your petitioner wherein it was adjudged that the provisions of Article 3 of Chapter 22 of the Acts of the General Assembly of the Commonwealth of Kentucky passed at its regular Session in the year 1906 being a part of an Act entitled "An Act relating to Revenue and Taxation" in so far as said provisions provide for the forfeiture of the title to land for the failure to list and pay taxes thereon for the years 1901, 1902, 1903, 1904 and 1905, or any three of such years, was not contrary to nor in violation of Section 10 of Article 1 of the Constitution of the United States which provides no State shall pass any bill of attainder, *ex post facto* law or law impairing the obligation of contracts.

It was also adjudged by said Court of Appeals of Kentucky by its said final judgment that the provisions of the said Act are not in violation and do not conflict with Section 1 of the 14th Amendment of the Constitution of the United States providing that no
81 state shall deprive any person of property without due process of law nor deny to any person within its jurisdiction the equal protection of the laws, all of which appears in the record, opinions and final judgment of said Court of Appeals of Kentucky affirming the judgment of the Leslie Circuit Court in so far as it adjudges a forfeiture of the title and claim of appellant to the land described in said judgment, whereby manifest error has happened to the great damage of your petitioner. Wherefore your petitioner prays for the allowance of a writ of error from the Supreme Court of the United States to the said Court of Appeals of Kentucky to the end that the record in said matter may be removed to the said Supreme Court of the United States, and the errors complained of by the plaintiff in error may be examined and corrected and the judgment aforesaid of said Court of Appeals may be reviewed and reversed.

W. B. DIXON,
Counsel for Plaintiff in Error.

Filed June 9, 1908.
ED. C. O'REAR,
Chief Justice Court of Appeals of Kentucky.

Filed June 9, 1908.
NAPIER ADAMS, *C. C. A.*

82 And on said date there was filed in the office of the Clerk of the Court of appeals a Writ of Error from the Supreme Court of the United States, to the Court of Appeals of Kentucky, and allowed by the Chief Justice of the Court of Appeals of Kentucky, and which is attached hereto, and is as follows:

83 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Court of Appeals of the State of Kentucky, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the said court of Appeals of the

State of Kentucky, before you, or some of you, being the highest Court of law or Equity of the said State in which a decision could be had in the said suit between the Kentucky Union Company, Appellant, and the Commonwealth of Kentucky, Appellee, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of the statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such, their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute or commission, a manifest error hath happened, to the great damage of the said Kentucky Union Company, plaintiff in error, as by its complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this
84 writ, so that you have the same at Washington, on the 9th day of July, 1908, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this the 9th day of June, A. D., 1908, and of the Independence of the United States of America the one hundred and thirty-second year.

[Seal 6th Circuit Court, Eastern Ky. Dis.,
U. S. of America.]

CHAS. N. WIARD,
Clerk of the Circuit Court of the United States for the Eastern District of Kentucky, at Frankfort.

Allowed by:
ED. C. O'REAR,
Chief Justice Court of Appeals, Kentucky.

Filed June 9, 1908.
NAPIER ADAMS,
Clerk of Court of Appeals.

85 And on said date there was filed in the office of the Clerk of the Court of Appeals, a Writ of Error Bond, and which is in words and figures as follows, to-wit:

86 Court of Appeals of Kentucky.

KENTUCKY UNION COMPANY, Plaintiff in Error,
vs.
COMMONWEALTH OF KENTUCKY, Defendant in Error.

Bond.

Know all men by these presents; that the Kentucky Union Company, principle, and W. B. Dixon, surety are held and firmly bound unto the above name- *of the* Commonwealth of Kentucky in the sum of $500.00 to be paid to the obligee herein, to which payment will and truly — be made we bind ourselves and each of us jointly and severally and each of our successors executors, *as* and administrators firmly *and* by these presents:

Sealed with our Seals and dated the 9th day of June A. D. 1908.

KENTUCKY UNION COMPANY,
By W. B. DIXON, *Attorney.*
W. B. DIXON.

Attest:

[SEAL.] NAPIER ADAMS, *C. C. A.*

Attest:

[SEAL.] NAPIER ADAMS, *C. C. A.*

87 Whereas the above named the Kentucky Union Company has prosecuted a writ of error from the Supreme Court of the United States to reverse the judgment rendered on the 25th day of March 1908 and the 22nd day of May 1908, by the Court of Appeals of Kentucky in the case of said Kentucky Union Company against said Commonwealth of Kentucky.

Now therefore, the condition of this obligation is such that if the above named Kentucky Union Company shall prosecute its writ of error to *affect* and shall answer all damages and costs that may be award*ing* against it if it fails to make its plea good then the above obligations *are* to be void, otherwise to remain in full force and virtue.

Sealed in the presence of us the 9th day of June A. D. 1908.

——— ———.

Attest:

NAPIER ADAMS, *C. C. A.*

Approved by me this 9th day of June 1908.

ED. C. O'REAR,
Chief Justice Kentucky Court of Appeals.
NAPIER ADAMS,
Clerk Kentucky Court of Appeals.

88 And afterwards on the 18th day of June, 1908, there was filed in the office of the Clerk of the Court of Appeals the Original Citation, and proof of service endorsed thereon, and which is in words and figures as follows, to-wit:

89 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Commonwealth of Kentucky, Greeting:

You are hereby cited and admonished to be and appear at a Session of the Supreme Court of the United States, to be holden at Washington, on the 9th day of July next, pursuant to a writ of error filed in the Clerk's Office of the Court of Appeals of Kentucky, wherein the Kentucky Union Company is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 9th day of June, in the year of our Lord, 1908, and of the Independence of the United States of America the 132nd.

ED. C. O'REAR,
Chief Justice of the Court of Appeals of Kentucky.

Attest:
NAPIER ADAMS,
Clerk Court of Appeals of Kentucky.

Service of this citation acknowledged this the 9th day of June, A. D., 1908.

JAMES H. JEFFRIES,
Counsel for Defendant in Error.

Filed June 18, 1908.
NAPIER ADAMS,
Clerk Court of Appeals of Kentucky.

90 THE COMMONWEALTH OF KENTUCKY.
The Court of Appeals, set:

In obedience to the command of the attached Writ of Error, I hereby transmit to the Supreme Court of the United States, a complete transcript of the entire record, with all things concerning the same, as the same appears from the records and files of my office.

In testimony whereof, I have hereunto subscribed my name, and attached my official seal. Done at the Capitol at Frankfort on this the 24th day of June, A. D., 1908.

[Seal Kentucky Court of Appeals.]

NAPIER ADAMS,
Clerk Court of Appeals of Kentucky.

Endorsed on cover: File No. 21,249. Kentucky Court of Appeals. Term No. 193. The Kentucky Union Company, plaintiff in error, vs. The Commonwealth of Kentucky. Filed July 3, 1908. File No. 21,249.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1910.

No. [redacted] 47.

THE EASTERN KENTUCKY COAL LANDS CORPORATION, PLAINTIFF IN ERROR,

vs.

THE COMMONWEALTH OF KENTUCKY.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF KENTUCKY.

FILED AUGUST 5, 1908.

(21,288.)

(21,288.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 223.

THE EASTERN KENTUCKY COAL LANDS CORPORATION, PLAINTIFF IN ERROR,

vs.

THE COMMONWEALTH OF KENTUCKY.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF KENTUCKY.

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1 THE COMMONWEALTH OF KENTUCKY:

Pleas Before the Honorable the Court of Appeals of Kentucky, at the Capitol, at Frankfort, on the 20 Day of December, A. D. 1907.

EASTERN KENTUCKY COAL LANDS CORPORATION, Appellant,
vs.
COMMONWEALTH OF KENTUCKY, Appellee.

Appeal from the Letcher Circuit Court.

Be it remembered that on the 25th day of July, A. D. 1907, the appellant by its attorney filed in the office of the Clerk of the Court of Appeals a copy of the judgment herein, and on which judgment an appeal was granted, and a summons and 2 copies issued, and which judgment is in words and figures as follows:

2 COMMONWEALTH OF KENTUCKY:

Letcher Circuit Court.

April Term, 15th Day of April, 1907.

In the Matter of the Application of EASTERN KENTUCKY COAL LANDS CORPORATION, INCORPORATED, to List for Assessment and Taxation and to Have Assessed the Taxes Which Ought to Have Been Assessed for the Years 1901, 1902, 1903, 1904, and 1905 on the Tracts of Land Herein Below Described.

Judgment on Appeal from Judgment of Letcher County Court.

Upon the calling of this cause in regular course, the Appellee, the Commonwealth of Kentucky, insisted upon its demurrer to the Petition and Application filed in the lower court, and also entered a motion and moved the Court to dismiss said Application and Petition.

Thereupon came the parties by counsel and argued the questions arising upon said demur- and motion and this cause is submitted thereupon.

3 Thereupon came the petitioner, by its Attorney, W. T. Mellon, and tendered and offered to file the affidavit of Wm. J. Hendrick, demur- to the Answer filed in the lower Court and reply to said Answer, also moved the Court to enter two separate orders. To the filing of each and all of which the Commonwealth objected and this cause is submitted on said motion to file the same.

And the Court upon the consideration thereof sustains the objections of the Commonwealth and each and all of them, to which the petitioner excepts.

Said affidavit, Demur-, Reply and orders are directed to be en-

dorsed "Tendered and offered to be filed" and are directed to be placed with the papers in the case.

Upon consideration of the Demur- of the Commonwealth to the petition and Application, and its motion to dismiss the same, the Court is of opinion and adjudges that Article III of an Act of the Legislature entitled "An Act relating to Revenue and Taxation" approved March 15th, 1906, and being Chapter 22 of the Acts of the Legislature of the session of 1906, is a lawful exercise of the Legislative power of this State; but the Court sustains the Demur- to the Petition and Application for the reasons that in the opinion of the Court the said petition and application is insufficient in that
4 it does not comply with the mandatory provisions of said Article, and for other good and sufficient reasons apparent upon the face of the petition and application.

It is further ordered and adjudged that the motion to dismiss the petition and application be, and the same is, now sustained, and that the petition and application be, and the same is now dismissed.

It is further adjudged that the Commonwealth recover of the petitioner, the Eastern Kentucky Coal Lands Corporation, its costs in this and the lower Court expended.

5 STATE OF KENTUCKY,
County of Letcher, set:

I, J. P. Adams, Clerk of the Circuit Court for the County and State aforesaid, certify that the foregoing is a true copy of a Judgment of the Letcher Circuit Court rendered at the April Term, 1907, of said Court, April 15, 1907, in the matter of the application of Eastern Kentucky Coal Lands Corporation, to list for assessment and taxation &c. certain lands in Letcher County, as same appears of record in my office in Civil Order Book "P," page 3 &c.

Given under my hand as Clerk aforesaid, this April 16, 1907.

J. P. ADAMS,
Clerk Letcher Circuit Court.

6 The summons issued on the judgment herein is in words and figures as follows:

7 *Summons on Appeal.*

The Commonwealth of Kentucky to the Sheriff of Letcher County, Greeting:

We command you to summon Commonwealth of Kentucky to appear before the Judges of the Court of Appeals of Kentucky, at the Capitol in Frankfort, on the first day of their next September Term, to show cause, if any it can, why a judgment obtained by it in the Letcher Circuit Court against Eastern Kentucky Coal Lands Corporation at its April Term, 1907, should not be reversed for the errors therein contained, as we from its complaint are informed, and have then and there this writ.

Witness, J. Morgan Chinn, Clerk of our said Court, at the Capitol aforesaid, this 25th day of July 1907.

J. MORGAN CHINN, *C. C. A.*,
By J. C. MORGAN, *D. C.*

8 Executed by delivering a true copy of within Summons to Robt. Blair, Co. Atty. for Letcher County and Ira Fields. Comlth. Attorney for 33rd Judicial Dist. of Kentucky.
7/31, 1907.

C. C. CRAWFORD, *S. L. C.*

9 And with said copy of judgment there was filed a Statement and which is in words and figures as follows:

10 Kentucky Court of Appeals.

EASTERN KENTUCKY COAL LANDS CORPORATION, Appellant,
vs.
COMMONWEALTH OF KENTUCKY, Appellee.

Statement on Appeal.

The judgment appealed from herein was rendered by the Letcher Circuit Court at its April term 1907, on the 15th (fifteenth) day of April, 1907.

Appellant wishes and directs summons to be issued herein to be directed to the Sheriff of Letcher County, to be executed upon the County Attorney of Letcher County and the Commonwealth's Attorney of the Judicial Circuit of which Letcher County forms a part.

EASTERN KENTUCKY COAL
LANDS CORPORATION.
By WM. J. HENDRICK,
Att'y for Appellant.

11 And afterwards on the 2nd day of October, 1907, there was filed in the office of the Clerk of the Court of Appeals a transcript of the record, and which is in words and figures as follows:

12 Be it remembered that on the 31st day of December, 1906, the Eastern Kentucky Coal Lands Corporation, incorporated, filed in the clerk's office of the Letcher County Court a petition seeking to list for assessment and taxation and to have assessed the taxes which ought to have been assessed for the years 1901, 1902, 1903, 1904 and 1905 on certain lands therein described; said application was heard and judgment thereon rendered by the Letcher County Court, from which judgment the petitioner appealed to the Letcher Circuit Court; and copy of petition and other papers transmitted from said Letcher County Court to said Letcher Circuit Court and all proceedings therein in said Letcher Circuit Court follow:

13 COMMONWEALTH OF KENTUCKY:

Letcher County Court.

In the Matter of the Application of EASTERN KENTUCKY COAL LANDS CORPORATION, INCORPORATED, to List for Assessment and Taxation and to Have Assessed the Taxes Which Ought to Have Been Assessed for the Years 1901, 1902, 1903, 1904, and 1905 on the Tracts of Land Herein Below Described.

To the County Court of the County of Letcher:

The petitioner, the Eastern Kentucky Coal Lands Corporation, respectfully shows to this Honorable Court as follows:

I. Your petitioner is a corporation created under the laws of the Commonwealth of Virginia, and authorized under its said corporate name to purchase, acquire and hold lands and titles, claims and interests in, upon or affecting lands and appurtenances thereto, situated in all or any of the States of Kentucky, Virginia and West Virginia and to do whatever may be deemed expedient to protect and enforce said titles, claims and interests, and if it be deemed expedient to improve and develop said lands or any parts thereof, or interests therein, by mining operations or otherwise, and to sell and convey, mortgage, lease or otherwise dispose of any or all such lands, titles, claims and interests aforesaid, or parts thereof at one time or from time to time as may be deemed expedient.

II. Your petitioner claims to be an owner of the herein below described tracts of land situated in the county of Letcher, State of Kentucky, but not of the improvements thereon, nor of the surface of certain parts of said tracts, as hereinafter stated, viz:

First. All that tract of land containing 18,520 acres by survey dated the 26th day of April, 1787, then lying in the county of Bourbon, State of Virginia, now mainly in the county of Letcher,
14 State of Kentucky, on the waters of Big Sandy river, and granted by the State of Kentucky to Richard W. Shipp and others by letters patent dated the 16th day of March, 1797, recorded in the Land Office of Kentucky in Book 7 of Grants, page 136, and therein described as follows:

Beginning at two white oaks, it being the most westwardly corner of a survey of 20,000 acres in the name of Merry Walker, thence with the back line of said survey South 45 degrees East 2,380 poles crossing some small branches of Sandy to two red oaks, thence South 45 degrees West 1,247 poles to a chestnut tree, thence North 45 degrees West 2,380 poles, crossing some of the headwaters of Kentucky to two white oaks, thence North 45 degrees East 1,247 poles to the beginning; with its appurtenances.

Said tract of land adjoins on its southeast side the State line between Kentucky and Virginia; on the northwest side the "Seventh" tract herein described; and on its Northeast side the "Fifth" tract herein described.

Second. All that part that is situated in said county of Letcher, estimated to be not more than 1,500 acres of all that tract of land

containing 40,418 acres by survey dated the 15th day of March, 1788, then lying in the county of Bourbon, State of Virginia, now mainly in the county of Pike, State of Kentucky, on the waters of Big Sandy river and granted by the State of Kentucky to John May and David Ross by Letters Patent dated the 11th day of April, 1794, recorded in the Land Office of Kentucky in Book 3 of Grants, page 514, and therein described as follows:

Beginning at two red oaks, this being the West corner of a survey of 20,000 acres made the 19th day of April, 1787, for Merry Walker, thence South 45 degrees East 2,380 poles to a sugar tree, poplar and walnut, said Walker's south corner, thence South 45 degrees West 2,717 poles to two sugar trees, a poplar and lynn at the head of spring, North 45 degrees West 1,120 poles to a large lick, the same course continued in all 2,380 poles, crossing several branches of Shelby creek to two chestnut oaks, thence North 45 degrees East 2,717 poles, crossing Main Shelby creek to the beginning; with its appurtenances.

Said part of said tract of land adjoins on its southeast side the "Ninth" tract herein described; on its southwest side the "Third" and "Fourth" tracts herein described; and on its northeast side the county line between Letcher and Pike counties.

Third. All that part that is situated in said county of Letcher, estimated to be not more than 1,000 acres, of all that tract of land containing 5,000 acres by survey dated the 22d day of April, 1787, then lying in the county of Bourbon, now in the counties of Pike and Letcher, State of Kentucky, in part on the waters of the Big Sandy river, and granted by the State of Virginia to John Craig, assignee of Merry Walker, by letters patent dated the 4th day of February, 1790, recorded in the Land Office of Virginia, in Book 21 of Grants, page 550, and in the Land Office of Kentucky, in Book 12 of (Virginia) Grants, page 351, and therein described as follows: Beginning at two chestnut oaks, being the west corner of the 40,518 acres that was withdrawn from the said entry, thence South 45 degrees East 1,190 poles to a sugar tree, thence South 45 degrees West 672 poles to a stake, thence North 45 degrees West 1,190 poles to two white oaks, thence North 45 degrees East 672 poles to the beginning; with its appurtenances.

Said part of said tract of land adjoins on its southeast side the "Fourth" tract herein described; on its southwest side the "Fifth" tract herein described; on its northwest side the "Sixth" tract herein described, and on its northeast side the county line between Letcher and Pike counties.

Fourth. All that part that is situated in said county of Letcher, estimated to be not more than 2,500 acres, of all that tract of land containing 5,000 acres, by survey dated the 23d day of April, 1787, then lying in the county of Bourbon, State of Virginia, now the counties of Pike and Letcher, State of Kentucky, in part on the waters of the Big Sandy river, and granted by the State of Virginia to John Craig, assignee of Merry Walker, by letters patent dated the 2d day of February, 1790, recorded in the Land Office of Virginia,

in Book 21 of Grants, page 549, and in the Land Office of
16 Kentucky, in Book 12 of (Virginia) Grants, page 350, and
therein described as follows: Beginning at a sugar tree, the east corner of said Merry Walker's survey of 5,000 acres and with a line of said survey South 45 degrees West 672 poles to a stake, thence South 45 degrees East 1,190 poles to two white oaks, thence North 45 degrees East 672 poles to two sugar trees, a poplar and lynn, thence North 45 degrees West 1,120 poles to a large lick, continued in all 1,190 poles to the beginning; with its appurtenances.

Said part of said tract of land adjoins on part of its southeast side the "Ninth" tract herein described; on its southwest side the "Fifth" tract herein described; on its northwest side the "Third" tract herein described, and on its northeast side the "Second" tract herein described.

Fifth. All that part that is situated in said county of Letcher, estimated to be not more than 16,000 acres of all that certain tract of land containing 20,000 acres by survey dated the 24th day of April, 1787, then lying in the county of Bourbon, State of Virginia, now in the counties of Pike and Letcher in the State of Kentucky, and granted by the State of Virginia to John Craig, assignee of Merry Walker, by letters patent dated the 4th day of February, 1790, recorded in the Land Office of Virginia, Book 22 of Grants, page 25, and in the Land Office of Kentucky, in Book 15 of (Virginia) Grants, page 211, and therein described as follows: Beginning at two white oaks, it being the west corner of said Walker's survey of 5,000 acres, thence with said survey South 45 degrees East, 1,190 poles crossing some of the branches of Shelby's creek to the west corner of another survey of 5,000 acres in the name of said Walker, and with the line of said survey the same course 1,190 poles to two white oaks, thence South 45 degrees West 1,344 poles to two red oaks, thence North 45 degrees West 2,380 poles, crossing some of the branches of Shelby's creek, to two white oaks, thence North 45 degrees East 1,344 poles to the beginning; with its appurtenances.

Said part of said tract of land adjoins on its southwest side the
"First" tract herein described; on its northwest side the
17 "Sixth" and "Eighth" tracts herein described, and on its
northeast side the "Third" and "Fourth" tracts herein described.

Sixth. All that part which is situated in said county of Letcher, estimated to be not more than 1,000 acres, of all that tract of land, containing 10,000 acres by survey dated the 4th day of May, 1787, then lying in the county of Bourbon, State of Virginia, now in the counties of Floyd, Pike, Knott and Letcher, in the State of Kentucky, and described in said survey as follows: Beginning at the Letter A, two sugar trees, being the south corner of I. Weaglesworth and Richard Young's survey of 10,000 acres in the line of Merry Walker's entry of 162,518 acres and with said Walker's line South 45 degrees West 1,000 poles to a white oak, thence North 45 degrees West 1,600 poles to two chestnut trees, thence North 45 degrees East 1,000 poles to a white oak, thence South 45 degrees East 570 poles to Weaglesworth and Young's west corner and with their line the same

course continued in all 1,600 poles to the beginning; with its appurtenances.

Said part of said tract of land adjoins on its southeast side the "Third" and "Fifth" tracts herein described; on its southwest side the "Eighth" tract herein described; on its northwest and northeast the county line.

Seventh. All that part that is situated in said county of Letcher, estimated to be not more than 9,000 acres, of all that tract of land, containing 12,058¾ acres by survey dated the 24th day of April, 1789, then lying in the county of Bourbon, State of Virginia, now in the counties of Letcher and Knott, State of Kentucky, granted by the State of Kentucky to George Lewis, assignee of Peter Grant by Letters Patent dated the 16th day of October, 1795, recorded in the Land Office of Kentucky in Book 5 of Grants, page 214, and therein described as follows:

Beginning at two white oaks, this being the most westwardly corner of a 200,000 acre survey made in the name of Merry Walker, also beginning corner of 18,520 acre survey made for Richard W. Shipp & Co., and corner to said Grant's survey of 8,000 acres, thence with said Grant's line North 45 degrees West 1,600 poles to a
18 corner to said Grant's survey of 8,000 acres to a sugar tree, thence South 45 degrees West 1,260 poles to an ash and poplar, thence South 45 degrees East 1,600 poles to two white oaks to said Shipp's & Co. and with their line North 45 degrees East 1,260 poles to the beginning; with its appurtenances.

Said part of said tract of land adjoins on its southeast side the "First" tract herein described; on its northwest side the county line between Letcher and Knott counties; and on its northeast side the "Eighth" tract herein described.

Eighth. All that part that is situated in said county of Letcher, estimated to be not more than 5,000 acres, of all that tract of land containing 8,000 acres by survey dated the 25th of April, 1789, then lying in the county of Bourbon, State of Virginia, now in the counties of Letcher and Knott, State of Kentucky, granted by the State of Kentucky to George Lewis, assignee of Peter Grant, by Letters Patent dated the 16th day of October, 1795, recorded in the Land Office of Kentucky in Book 5 of Grants, page 213, and therein described as follows:

Beginning at a white oak corner to Michael Ryan's survey of 10,000 acres in Merry Walker's line, thence North 45 degrees West 1,600 poles with said Ryan's line to his corner, two chestnut trees, thence South 45 degrees West 800 poles to a sugar tree corner to said Grant's 12,058¾ acres survey, thence with the line of said survey, South 45 degrees East 1,600 poles to the beginning corner of said Grant's 12,058¾ acre survey at two white oaks in Merry Walker's line, thence with his line North 45 degrees East 800 poles to the beginning; with its appurtenances.

Said part of said tract of land adjoins on its southeast side the "Fifth" tract herein described; on its southwest side the "Seventh" tract herein described; on its northwest side the county line between Letcher and Knott counties, and on its northeast side the "Sixth" tract herein described.

Ninth. All that part that is situated in said county of Letcher, estimated to be not more than 500 acres of all that tract of land containing 20,000 acres by survey dated the 18th day of
19 April, 1787, then lying in the county of Bourbon, State of Virginia, now partly in the county of Pike, State of Kentucky, and partly in the State of Virginia, on the waters of Big Sandy river, and granted by the State of Virginia to Richard Adams by Letters Patent dated the 24th day of February, 1790, recorded in the Land Office of Virginia in Book 21 of Grants, page 670, and in the Land Office of Kentucky in Book 12 of (Virginia) Grants, page 384, amnd therein described as follows:

Beginning on the most westwardly corner of Daniel Duval's and Charles Marshall's survey of 20,000 acres at two sugar trees, thence with the line of the same South 45 degrees East 1,460 poles to a stake, thence south 45 degrees West 2,191¾ poles to three chestnut trees, thence North 45 degrees west 11,460 poles to two sugar trees, thence North 45 degrees East 2,191¾ poles to the beginning, with its appurtenances.

III. Your petitioner claims said tracts of land respectively under the grants stated respectively in the foregoing description of said tracts; and the instruments through which title to each of said tracts devolved upon your petitioner are deeds from Charles B. Hillhouse, grantor to your petitioner grantee, dated respectively the 21st and 24th day of December, 1906, not yet recorded, conveying all the right, title and interest of said Charles B. Hillhouse, in and to each of said tracts of land respectively, the title of said Hillhouse having been derived by deeds to him by others claiming by inheritance, devise or mesne conveyances from those to whom said tracts of land respectively were granted as aforesaid by the letters patent above described respectively.

IV. Said tracts of land have not been listed for taxation for any of the years 1901, 1902, 1903, 1904, or 1905, by your petitioner, nor as your petitioner is informed and believes, by any of those under whom your petitioner claims, nor have the taxes for any of said years been paid by your petitioner, nor, as your petitioner is informed and believes, by any of those under whom your petitioner claims; but your petitioner is informed and believes, and, therefore, avers and alleges that parts of each of said tracts have been listed for
20 taxation for each of said years by occupants and others than those under whom your petitioner claims, and that taxes for each of said years on parts of each of said tracts have been paid by said occupants or others.

V. Your petitioner does not claim to be the owner of any improvements on any of said tracts of land, nor of so much of the surface of said land as has been adversely held by others for a period sufficient to toll the petitioner's right of entry.

VI. Your petitioner is advised by counsel learned in the law and believes that in all of said years and now, under the laws of the Commonwealth of Kentucky, whenever the occupant or occupants of any part or parts of any of said tracts have paid the taxes thereon which those under whom your petitioner claims ought to have paid or ought

to pay the person so paying the tax shall be entitled to recover of the owner the amount of tax so paid and interest, which shall continue a lien on the property upon which such taxes was paid.

VII. Your petitioner now files his petition under the provisions of Article II of an act of the Legislature of the Commonwealth of Kentucky, entitled "An act relating to Revenue and Taxation," approved March 15, 1906, and applies to and asks this Honorable Court to ascertain the amount of unpaid taxes which your petitioner or those under whom your petitioner claims should have paid for any and all of said years 1901, 1902, 1903, 1904 and 1905, and to make the assessments required by said act of the Legislature.

And as in duty bound, so your petitioner will ever pray.

EASTERN KENTUCKY COAL LANDS CORP.,
By SAMUEL HOWLAND HOPPIN, *President.*

STATE OF NEW YORK,
County of New York ss:

Samuel Howland Hoppin, being duly sworn, says that he is the president and chief officer of the Eastern Kentucky Coal Lands Corporation, the petitioner above named, and that the board of directors of said corporation has authorized and directed that the foregoing petition of said corporation be duly verified under oath and
21 filed, and deponent further says that the statements of the foregoing petition are true.

SAMUEL HOWLAND HOPPIN.

Subscribed and sworn to before me by Samuel Howland Hoppin this 24th day of December, 1906.

My commission expires the 30th day of March, 1907.

[SEAL.] WALKER M. JACKSON,
Notary Public, New York County.

COMMONWEALTH OF KENTUCKY,
County of Pike:

Robt. L. Miller states that he is the attorney of the above named petitioner, the Eastern Kentucky Coal Lands Corporation, incorporated; that its chief officer is absent from the county, and the statements of the foregoing petition are true.

ROBT. L. MILLER.

Subscribed and sworn to before me by Robt. L. Miller this 27th day of December, 1906.

My commission expires the 5th day of February, 1910.

[SEAL.] J. LEE HATCHER,
Notary Public, Pike County, Ky.

Filed December 31, 1906.

ANDREW J. STURGILL, *C. L. C. C.*

Filed in my office, February 8, 1907.

J. P. ADAMS,
Clerk Letcher Cir. Ct.

Letcher County Court.

In the Matter of the Application of EASTERN KENTUCKY COAL LANDS CORPORATION, INCORPORATED, to List for Assessment and Taxation and to Have Assessed the Taxes Which Ought to Have Been Assessed for Taxation for the Years 1901, 1902, 1903, 1904, 1905.

Now comes Robert Blair, county attorney of Letcher county,
22 Kentucky, and demurs to the petition herein filed December the 31st, 1906, and sets down for his grounds of demurrer:

First. Because the petitioners have no claim or interest in any lands in this, Letcher county.

Second. Because the petition filed herein does not state facts sufficient to authorize this court to list same for taxation, and have wholly failed to comply with any of the requirements of the laws of this State.

ROBERT BLAIR,
County Att'y of Letcher County, Kentucky.

Filed in open court on the 16th day of January, 1907.
A. J. STURGILL, *C. L. C. C.*

Filed in my office February 8, 1907.
J. P. ADAMS,
Clerk Letcher Circuit Court.

COMMONWEALTH OF KENTUCKY:

Letcher County —.

In the Matter of the Application of EASTERN KENTUCKY COAL LANDS CORPORATION, INCORPORATED, to List for Assessment and Taxation and to Have Assessed the Taxes Which Ought to *to* Have Been Assessed for the Years 1901, 1902, 1903, 1904, and 1905 on the Tracts of Land Herein Described.

First. The undersigned, R. Blair, the duly elected, qualified and acting county attorney for Letcher county, and for Letcher county and its own behalf answers the petition herein of the Eastern Kentucky Coal Lands Corporation, and for answer denies that he has any knowledge or information sufficient from which to form a belief as to whether or not the petitioner is a corporation, created under the laws of the Commonwealth of Virginia, authorized to do any of the things set out in the first paragraph of its petition.

He denies that he has any knowledge or information suffi-
23 cient from which to form a belief as to whether or not either of the alleged tracts of land, set out and described in the petition, and which tracts of land the said petitioner now seeks to have enlisted for taxation, lie within the county of Letcher, or as to whether any portion of said alleged tracts of land lie in said Letcher county.

And he denies that the said petitioner is the owner of or has claim, right, or title to either or any of said tracts of land, or any portion thereof, in Letcher county, by virtue of grants from either the State of Kentucky or Virginia, or that the said petitioner has any right, title or claim whatever to any land lying in Letcher county, Kentucky, by virtue of a grant from the State of Kentucky to Richard W. Shipp, et al., dated the 16th day of March, 1797; or by virtue of a grant from the State of Kentucky to John May and David Ross, bearing date the 17th day of April, 1794; or by virtue of a grant from the State of Virginia to John Craig, dated the 4th day of February, 1790; or by virtue of a grant from the State of Virginia to John Craig, dated the 2d day of February, 1790; or by virtue of a grant from the State of Virginia to John Craig, dated the 4th day of February, 1790; or virtue of a survey of 10,000 acres of lands, dated the 4th day of May, 1787, or by virtue of a survey for 12,658¾ acres, dated the 24th day of April, 1789, granted by the State of Kentucky to George Lewis, of October 16, 1795; or by virtue of a grant from the State of Kentucky to George Lewis, dated October 16, 1795; or by virtue of a grant from the State of Virginia to Richard Adams, dated the 21st day of February, 1790.

And he denies that he has any knowledge or information from which to form a belief as to whether either or any of said tracts of land under the grants, or any of the said grants set out in said petition, or the lands described, or any of same are claimed by petitioner through said grants; or as to whether Charles B. Hillhouse, by deed or other conveyance, conveyed or attempted to convey said lands, or any of same, to the petitioner on the 21st and 24th day of December, 1906, or at any time, by deed or otherwise, conveying right, title or interest of said Charles B. Hillhouse in or to
24 each or either of said tracts of land; or as to whether said Hillhouse has derived by deeds or otherwise, or by inheritance, devise or mesne conveyances from those under whom said tracts of land respectively were granted, or to either of same, or at all, under or by virtue of the grants or letters patent set forth in the petition or otherwise.

He denies that the said petitioner has any right whatever under the provisions of Article 3 of an act of the Legislature of the Commonwealth of Kentucky entitled "An Act Relating to Revenue and Taxation," approved March 15, 1906, to apply to the Letcher County Court, or to have an order made by the said Letcher County Court, assessing said lands, or any of same, for taxation, in the name of the petitioner, or at all, for either the years 1901, 1902, 1903, 1904 and 1905, or for any time, or for any year; or to apply to said court to ascertain the amount of tax not paid, or any taxes which the petitioner, or those under whom the petitioner claims, should have paid for said years.

Second. For further answer herein the undersigned, county attorney, further says that he can not say from the descriptions of the lands claimed by the petitioner and as set forth and described in the petition herein, as to whether either of said tracts, or any parts of either of said tracts of land, lie in the county of Letcher, but he says

that if it should turn out that either of said tracts do lie within the county of Letcher, then he says that each and every portion thereof is held, owned and in the adverse possession of citizens of Letcher county and others who have title thereto deducible of record from the Commonwealth of Kentucky, and under and by virtue of each title they have held every part and parcel of said land to a well-defined and marked boundary and been in the occupancy and possession thereof for a period of more than five years, more than fifteen years, and for more than thirty years, next before the application was filed herein, claiming and holding every part and parcel of said lands to a well-defined and marked boundary against the claim of all persons whatsoever and against all the world.

25 And he states that all claim, if ever there any existed, to any one by virtue of either of the grants referred to in the application, *have* long been barred and their right to entry tolled, under and by virtue of the statutes of repose in vogue in the State of Kentucky.

Third. For further answer, he says that at the time of the execution of the said alleged deed, or deeds, from Charles B. Hillhouse to the petitioner, on December 21st and 24th, 1906, that all the lands within the bounds of Letcher county were in the actual, peaceable adverse possession of citizens and other persons occupying said lands, who claimed and held same under titles of record deducible from the Commonwealth of Kentucky to well-defined and marked boundary, holding and claiming same adversely to all the world, and he states that said deed, or deeds, if in fact made, were champertous, null and void and passed no title, right or claim whatsoever to the petitioner.

Wherefore, he prays that the application herein be dismissed and the prayer of the petitioner be denied, and he prays for all proper relief.

ROBERT BLAIR,
County Attorney for Letcher Co.

R. Blair says he is county attorney for Letcher county, and that the statements contained in the foregoing answer are true.

ROBERT BLAIR.

Subscribed and sworn to before me by R. Blair this, the 16th day, 1907, of Ja'ry.

JOHN A. CRAFT,
Judge Letcher County Court.

Filed in open court January 16, 1907.

ANDREW J. STURGILL, *C. L. C. C.*

Filed in my office February 8, 1907.

J. P. ADAMS,
Clerk Letcher Cir. Ct.

26 COMMONWEALTH OF KENTUCKY:

Letcher County Court.

In the Matter of the Application of EASTERN KENTUCKY COAL LANDS CORPORATION, INCORPORATED, to List for Assessment and Taxation and to Have Assessed the Taxes Which Ought to Have Been Assessed for the Years 1901, 1902, 1903, 1904, and 1905 on the Tracts of Land Herein Below Described.

This day came R. Blair, county attorney of Letcher county and produced and filed demurrer to the petition and application herein and not waiving said demurrer, produced and filed answer.

Thereupon, the petitioner was called and the case came on for hearing, and the petitioner failing to appear, or plead further, or produce any evidence in support of its application herein, and the court being advised from the pleadings, adjudges that the said application of the petitioner be denied, and said application and petition herein are now dismissed.

Filed in open court, January 16, 1907.

ANDREW J. STURGILL, *C. L. C. C.*

Filed in my office February 8, 1907.

J. P. ADAMS,
Clerk Letcher Cir. Ct.

COMMONWEALTH OF KENTUCKY:

Letcher County Court.

January Special Term, January 16th, 1907.

In the Matter of the Application of EASTERN KENTUCKY COAL LANDS CORPORATION, INCORPORATED, to List for Assessment and Taxation and to Have Assessed the Taxes Which Ought to Have Been Assessed for the Years 1901, 1902, 1903, 1904, and 1905 on the Tracts of Land Herein Below Described.

Order.

27 This day came R. Blair, county attorney, of Letcher county, and produced and filed demurrer to the petition and application herein and not waiving said demurrer produced and filed answer.

Thereupon the petitioner was called and the case came on for hearing, and the petitioner failing to appear or plead further or produce any evidence in support of its application herein and the court being advised from the pleadings adjudges that said application of the petitioner be denied and the said application and petition herein are now dismissed.

COMMONWEALTH OF KENTUCKY,
County of Letcher:

I, Andrew J. Sturgill, clerk of the Letcher County Court, hereby certify that the foregoing is a true copy of the order entered in the above styled cause on the 16th day of January, 1907, as the same remains on file and of record in my office, and I further certify that the cost in this court is 50 cents.

Given under my hand this 6th day of February, 1907.

ANDREW J. STURGILL,
Clerk of Letcher County Court.

Appeal bond executed; certified copy order county court filed; tax paid; supersedeas and one copy issued; Feb. 8, 1907.

J. P. ADAMS,
Clerk Letcher Circuit Court.

Appeal Bond.

EASTERN KENTUCKY COAL LANDS CORPORATION, Appellant,
vs.
COMMONWEALTH OF KENTUCKY and COUNTY OF LETCHER, Appellee.

Appeal from a Judgment of the Letcher County Court.

Eastern Kentucky Coal Lands Corporation having prayed an appeal to the Letcher Circuit Court from the judgment of Letcher County Court.

Now we covenant, that said Eastern Kentucky Coal Lands
28 Corporation will pay to appellee all costs and damages that shall be adjudged against the appellant on the appeal and will satisfy and perform the judgment of the court that shall be rendered upon the appeal.

Witness our hand this 8th day of February, 1907.

J. M. SANDERS.
L. D. SANDERS.
WILLIAM ISON.

Taken and subscribed before me as clerk Letcher Circuit Court.

J. P. ADAMS, *C. L. C. C.*

Letcher Circuit Court.

In the Matter of the Application of EASTERN KENTUCKY COAL LANDS CORPORATION to List for Assessment and Taxation and to Have Assessed the Taxes Which Ought to Have Been Assessed for the Years 1901, 1902, 1903, 1904, and 1905 on the Lands Described in its Petition.

Supersedeas on Appeal.

To the Honorable John A. Craft, Judge of the Letcher County Court:

Eastern Kentucky Coal Lands Corporation having taken an appeal to this court from a judgment rendered by you, on the 16th day of January, 1907, in the matter of the application of Eastern Kentucky Coal Lands Corporation to list for assessment and taxation and to have assessed the taxes which ought to have been assessed for the years 1901, 1902, 1903, 1904, and 1905, on the lands described in its petition, against said Eastern Kentucky Coal Lands Corporation,

You are therefore ordered to stay all proceedings on said judgment and to transmit to the clerk's office of this court all original papers in said action.

Given under my hand as clerk of said court, this 8th day of February, 1907.

J. P. ADAMS,
Clerk of Letcher Circuit Court.

29 Executed by delivering a true copy of within process to John A. Craft, Judge of Letcher County Court, this Feb. 8, 1907.

C. C. CRAWFORD, *S. L. C.*

Filed in my office February 8, 1907.

J. P. ADAMS,
Clerk Letcher Circuit Court.

Letcher Circuit Court.

In the Matter of the Application of EASTERN KENTUCKY COAL LANDS CORPORATION to List for Assessment and Taxation and to Have Assessed the Taxes Which Ought to Have Been Assessed for the Years 1901, 1902, 1903, 1904, and 1905, on the Lands Described in Its Petition.

Notice on Appeal.

To Robert Blair, County Attorney of Letcher County:

You will take notice that Eastern Kentucky Coal Lands Corporation has this day taken an appeal to the Letcher Circuit Court from a judgment rendered by the Letcher County Court, on the 16th day of January, 1907, in the matter of the application of Eastern Ken-

tucky Coal Lands Corporation to list for assessment and taxation and have assessed the taxes which ought to have been assessed for the years 1901, 1902, 1903, 1904 and 1905, and that said action will stand for trial at the August term, 1907, of said Letcher Circuit Court.

This February —, 1907.

EASTERN KENTUCKY COAL LANDS CORP.,
By WM. J. HENDRICK, *Counsel.*

Executed by delivering a true copy of notice to Robt. Blair, county attorney for Letcher County, February 12, 1907.

C. C. CRAWFORD, *S. L. C.*

Filed in my office February 12, 1907.

J. P. ADAMS,
Clerk Letcher Cir. Ct.

30 COMMONWEALTH OF KENTUCKY:

Letcher Circuit Court.

In the Matter of the Application of EASTERN KENTUCKY COAL LANDS CORPORATION, INCORPORATED, to List for Assessment and Taxation and to Have Assessed the Taxes Which Ought to Have Been Assessed for the Years 1901, 1902, 1903, 1904, and 1905 on the Tracts of Land Described in this Petition.

On Appeal from Judgment of the Letcher County Court.

Affiant, Wm. J. Hendricks, being first duly sworn, deposeth and says:

That affiant is the leading counsel in Kentucky of Eastern Kentucky Coal Lands Corporation, and that the order annexed hereto, marked for identification as "Letcher No. 1," was drawn at Prestonburg, Floyd county, Kentucky, on January 14, 1907, by affiant, as counsel for the petitioner, and J. W. M. Stewart, Esq., representing the interests in opposition, and an agreement then and there made that said order marked "Letcher No. 1" should be entered as the judgment of the county court of Letcher county, and the said order then and there delivered to S. E. Baker, of the firm of Salyer & Baker, at Whitesburg, an attorney of the Northern Coal & Coke Company, who represented that he was just then leaving by horseback for Whitesburg and would see that said order was entered as drawn and handed to him, it being represented to affiant at the time that Mr. Baker was a reputable practicing lawyer of the Letcher county bar.

Affiant for this reason, did not go to Letcher county at the time set for the hearing in the county court, as he intended to do, and was not present when the case was called for trial for this reason alone.

Affiant did not know for several days after that said order had not been entered as agreed, and on learning that it had not been so entered sent a representative to Whitesburg and thus learned, about

two weeks after the time set for trial, that the county attorney had filed an answer in addition to a demurrer and motion to dis-
31 miss, and that the order marked "Letcher No. 1," a copy of which is attached to this affidavit, had never been entered in the Letcher county court.

WM. J. HENDRICK.

Subscribed and sworn to before me this 11th day of April, 1907.

[SEAL.] HERBERT FITZPATRICK,
Notary Public in and for Cabell Co., W. Va.

"Letcher No. 1."

COMMONWEALTH OF KENTUCKY:

Letcher County Court.

In the Matter of the Application of EASTERN KENTUCKY COAL LANDS CORPORATION, INCORPORATED, to List for Assessment and Taxation and to Have Assessed the Taxes Which Ought to Have Been Assessed for the Years 1901, 1902, 1903, 1904, and 1905 on the Tracts of Land Described in its Petition.

Came the Eastern Kentucky Coal Lands Corporation, the above-named petitioner and applicant, by its counsel, Wm. J. Hendrick, and the Commonwealth of Kentucky and Letcher county, by Robert Blair, county attorney of Letcher county, and it appearing that notice, in writing, of hearing upon said application before the Letcher County Court, on Wednesday, January 16, 1907, had been duly executed upon said Robert Blair, the petitioner produced and offered to read in evidence the assessor's books of Letcher county, for the year 1906, from the clerk's office of the Letcher County Court, and moved the court to assess the 55,020 acres claimed by it in Letcher county at the sum of $1.00 per acre for the total acres listed for assessment, to which motion and offer to read the assessor's book in evidence the county attorney objected, and said objection and the matters arising upon said petition and application coming on to be heard, the cause was submitted to the court for judgment upon the petition, evidence and exhibits, and the entire record, and the court having heard the argument of counsel, and being sufficiently
32 advised, adjudges that the said petition be, and the same is now, dismissed.

To which orders and judgment the petitioner, Eastern Kentucky Coal Lands Corporation, objects and excepts and prays an appeal to the Letcher Circuit Court, which is granted upon the petitioner lodging the record herein with the clerk of the Letcher Circuit Court within thirty days from the entry of this judgment.

Tendered and offered to be filed in open court, April 15, 1907.

J. P. ADAMS, *Clerk.*

COMMONWEALTH OF KENTUCKY:

Letcher Circuit Court.

Demurrer.

In the Matter of the Application of EASTERN KENTUCKY COAL LANDS CORPORATION, INCORPORATED, to List for Assessment and Taxation and to Have Assessed the Taxes Which Ought to Have Been Assessed for the Years 1901, 1902, 1903, 1904, and 1905, Upon the Lands Described in Its Petition.

Comes the petitioner, Eastern Kentucky Coal Lands Corporation, by its attorney, Wm. T. Mellon, and demurs to the answer filed herein by Robert Blair, county attorney of Letcher county, on the 16th day of January, 1907, and sets down as grounds for said demurrer that said answer does not contain any statement or statements of fact sufficient to maintain a defense to the petition herein, nor does it state facts sufficient to constitute a defense herein.

Wherefore petitioner prays as in its petition and for all general and appropriate relief.

Tendered and offered to be filed in open court April 15, 1907.

J. P. ADAMS, *Clerk.*

33 COMMONWEALTH OF KENTUCKY:

Letcher Circuit Court.

Reply.

In the Matter of the Application of EASTERN KENTUCKY COAL LANDS CORPORATION, INCORPORATED, to List for Assessment and Taxation and to Have Assessed the Taxes Which Ought to Have Been Assessed Against it for the Years 1901, 1902, 1903, 1904 and 1905, Upon the Lands Described in its Petition.

Now comes Eastern Kentucky Coal Lands Corporation, by W. T. Mellon, its attorney, and for reply to the answer filed herein on January 16, 1907, by Robert Blair, county attorney of Letcher county, and says:

That it denies that each and every portion of the land owned by it in Letcher county is in the adverse possession of citizens of Letcher county, or others who have title thereto deducible from the Commonwealth of Kentucky, or that under or by virtue of such title, or any title, others have held every part and parcel of said land to a well-defined and marked boundary, or have been in the occupancy or possession thereof for a period of more than five years, or a period of more than fifteen years, or of a period of more than thirty years next before the filing of the petition herein; and it denies that any claim or all claims of the petitioner to said land so described in said petition has been barred or its right of entry tolled under or by virtue of any statute or law of Kentucky.

Further replying petitioner says that it denies that all the lands within the bounds of Letcher County were in the actual, peaceable, adverse possession of citizens or other persons occupying said lands who claim and hold same under titles of record deducible from the Commonwealth of Kentucky, and denies that the deed or deeds under which petitioner holds conveyances for said lands are champertous and void.

Wherefore petitioner prays as in its petition and for all appropriate and general relief.

EASTERN KENTUCKY COAL LANDS CORP.,
By W. T. MELLON, *Attorney.*

34 William T. Mellon says that he is an attorney for Eastern Kentucky Coal Lands Corporation; that the officers of said corporation are now absent from Letcher county and the State of Kentucky; and that he believes the statements contained in the foregoing reply are true.

W. T. MELLON.

Subscribed and sworn to before me by W. T. Mellon this 15th day of April, 1907.

J. P. ADAMS,
Clerk Letcher Cir. Ct.

Tendered and offered to be filed in open court, April 15, 1907.
J. P. ADAMS, *Clerk.*

COMMONWEALTH OF KENTUCKY:

Letcher Circuit Court.

In the Matter of the Application of EASTERN KENTUCKY COAL LANDS CORPORATION, INCORPORATED, to List for Assessment and Taxation and to Have Assessed the Taxes Which Ought to Have Been Assessed for the Years 1901, 1902, 1903, 1904 and 1905, upon the Lands Described in its Petition.

Came the petitioner, Eastern Kentucky Coal Lands Corporation, and here now, in open court, offers to list the 55,020 acres of land claimed by it in Letcher county and described in its petition, for assessment for purposes of taxation, at the rate of one dollar ($1.00) per acre and to pay the taxes thereon assessed at said rate.

Tendered and offered to be filed in open court, April 15, 1907.

J. P. ADAMS, *Clerk.*

35 COMMONWEALTH OF KENTUCKY:

Letcher Circuit Court.

In the Matter of the Application of EASTERN KENTUCKY COAL LANDS CORPORATION, INCORPORATED, to List for Assessment and Taxation and to Have Assessed the Taxes Which Ought to Have Been Assessed for the Years 1901, 1902, 1903, 1904 and 1905, Upon the Lands Described in its Petition.

Order.

The affidavit of Wm. J. Hendrick was produced herein and ordered filed.

On motion of William T. Melton, attorney for Eastern Kentucky Coal Lands Corporation, it is ordered that the order offered to be filed herein in the county court on the 16th day of January, 1907, and marked for identification "Letcher No. 1," be and the same is hereby filed and made part of the record, but not to be spread upon the order book.

Tendered and offered to be filed in open court, April 15, 1907.

J. P. ADAMS, *Clerk.*

Orders. Civil Causes.

Letcher Circuit Court, April Term, 15 Day of April, 1907.

In the Matter of the Application of EASTERN KENTUCKY COAL LANDS CORPORATION, INCORPORATED, to List for Assessment and Taxation and to Have Assessed the Taxes Which Ought to Have Been Assessed for the Years 1901, 1902, 1903, 1904 and 1905, on the Tracts of Land Herein Below Described.

Judgment on Appeal from Judgment of Letcher County Court.

Upon the calling of this cause in regular course, the appellee, the Commonwealth of Kentucky, insisted upon its demurrer to the petition and application filed in the lower court, and also entered a motion and moved the court to dismiss said application and petition.

Thereupon came the parties by counsel and argued the questions arising upon said demur and motion and this cause is submitted thereupon.

36 Thereupon came the petitioner by its attorney, W. T. Melton, and tendered and offered to file the affidavit of Wm. J. Hendricks, demur to the answer filed in the lower court and reply to said answer, also moved the court to enter two separate orders. To the filing of each and all of which the Commonwealth objected and this cause is submitted on said motion to file the same.

And the court upon the consideration thereof sustains the objections of the Commonwealth and each and all of them, to which the petitioner excepts.

Said affidavit, demur, reply and orders are directed to be endorsed "tendered and offered to be filed" and are directed to be placed in the papers in this case.

Upon consideration of the demur of the Commonwealth to the petition and application, and its motion to dismiss the same, the court is of opinion and adjudges that article III of an act of the Legislature, entitled "An act relating to Revenue and Taxation," approved March 15, 1906, and being chapter 22 of the acts of the Legisature of the session of 1906, is a lawful exercise *to* the legislative power of this State; but the court sustains the demur to the petition and application for the reasons that in the opinion of the court the said petition and application is insufficient in that it does not comply with the mandatory provisions of said article, and for other good and sufficient reasons apparent upon the face of the petition and application.

It is further ordered and adjudged that the motion to dismiss the petition and application be, and the same is, now sustained, and that the petition and application be, and the same is now dismissed.

It is further adjudged that the Commonwealth recover of the petitioner, the Eastern Kentucky Coal Lands Corporation, its costs in this and the lower court expended.

37 COMMONWEALTH OF KENTUCKY:

Letcher Circuit Court.

In the Matter of the Application of EASTERN KENTUCKY COAL LANDS CORPORATION, INCORPORATED, to List for Assessment and Taxation and to Have Assessed for Taxes Which Ought to Have Been Assessed for the Years 1901, 1902, 1903, 1904, and 1905 upon the Lands Described in Its Petition.

Schedule.

Now comes the petitioner, Eastern Kentucky Coal Lands Corporation, and directs the clerk of the Letcher Circuit Court to make complete copy of all pleadings, orders, judgments and the entire record of all papers on file in the office of the clerk of the Letcher Circuit Court in the above style matter and application, and deliver same to the petitioner as a transcript to be used on appeal from the judgment therein rendered to the Court of Appeals of Kentucky.

EASTERN KENTUCKY COAL LANDS CORP.,
By WM. J. HENDRICK,
Attorney and Counsel for Petitioner.

Filed in office May 30, 1907.

J. P. ADAMS, *Clerk.*

STATE OF KENTUCKY,
County of Letcher, set:

I, J. P. Adams, clerk of the circuit court for the county and State aforesaid, certify that the foregoing twenty-five pages of, and the

above typewritten matter are a true and correct copy of the entire record in the matter of the application of Eastern Kentucky Coal Lands Corporation, Incorporated, to list for assessment and taxation, and to have assessed the taxes which ought to have been
38 assessed for the years 1901, 1902, 1903, 1904 and 1905, on the tracts of land described in its petition, as same now appears of record and on file in my office.

Given under my hand as clerk aforesaid, this May 31, 1907.

J. P. ADAMS,
Clerk Letcher Circuit Court.

39 EASTERN KENTUCKY COAL LANDS CORPORATION, Appellant,
vs.
COMMONWEALTH OF KENTUCKY, Appellee.

Appeal from Knott Circuit Court.

Be it remembered that on the 25th day of July, 1907, the appellant by its attorney filed in the office of the Clerk of the Court of Appeals a copy of Judgment herein, and on which judgment an appeal was granted, and a summons and copy issued to Floyd and Knott Counties respectively, and which copy of judgment is in words and figures as follows, to-wit:

40 Knott Circuit Court.

March Term, 1st Day, March 18". 1907.

COMMONWEALTH OF KENTUCKY:

Knott Circuit Court.

In the Matter of the Application of EASTERN KENTUCKY COAL LANDS CORPORATION, INCORPORATED, to List for Assessment and Taxation and to Have Assessed for Taxes Which Ought to Have Been Assessed for the Years 1901, 1902, 1903, 1904, and 1905 on the Tract of Land Hereinbefore Described.

On Appeal from Judgment of Knott County Court.

This proceeding coming on in regular call and the parties having announced ready, the same was submitted to the Court on the demurrer to, and the motion to dismiss, the petition and application, and arguments of Counsel were heard upon same, and the Court as now advised upon consideration of the petition and application is of the opinion that Article III of an act of the Legislature entitled "An act relating to Revenue and Taxation", approved
41 March the 15th, 1906, and being chapter 22, of the acts of the legislature of the Session of 1906, is a lawful exercise of the Legislative powers of this State, but the Court sustains the demurrer to the petition and application for the reason that in the opinion of

the Court the said petition and application is insufficient in that it does not comply with the mandatory provisions of said article, and for other good and sufficient reasons apparent of the face of the petition and application. It is further ordered and adjudged that the motion to dismiss the petition and application, be and the same is now sustained, and that the petition and application be and the same is now dismissed. It is further adjudged that the Commonwealth recover of the petitioner, the Eastern Kentucky Coal Lands Corporation, its cost- in this and in the lower Courts expended.

42 STATE OF KENTUCKY,
Knott County:

I, L. C. Slone, Clerk of the Circuit Court in and for the County and State aforesaid, do certify that the above and foregoing is a true and complete copy of the judgment rendered in the Knott Circuit Court, at its March Term 1907, in the above styled cause as shown by the records in my said office.

Given under my hand as Clerk of said Court, this the 11th day of April, 1907.

L. C. SLONE,
Clerk Knott Circuit Court.

43 The summons issued on said judgment is in words and figures as follows, to-wit:

44 *Summons on Appeal.*

The Commonwealth of Kentucky to the Sheriff of Knott County, Greeting:

We command you to summon Commonwealth of Kentucky to appear before the Judges of the Court of Appeals of Kentucky, at the Capitol in Frankfort, on the first day of their next September Term, to show cause, if any, it can, why a judgment obtained by them in the Knott Circuit Court against Eastern Kentucky Coal Lands Corporation at its March Term, 1907, should not be reversed for the errors therein contained, as we from its complaint are informed, and have then and there this writ.

Witness, J. Morgan Chinn, Clerk of our said Court, at the Capitol aforesaid, this 25th day of July, 1907.

J. MORGAN CHINN, *C. C. A.*,
By J. C. MORGAN, *D. C.*

[Endorsed:] Court of Appeals. Eastern Ky. Coal Lands Corporation vs. Com'th of Ky. Summons. 2 Cop. Issued. To Sept. Term, 1907. Knott County.

Executed on the County Attorney by delivering to him a true copy of the within notice.
This Aug. 5, 1907.

GEORGE HAYS, *S.*

45 *Summons on Appeal.*

The Commonwealth of Kentucky to the Sheriff of Floyd County, Greeting:

We command you to summon Commonwealth of Kentucky to appear before the Judges of the Court of Appeals of Kentucky, at the Capitol in Frankfort, on the first day of their next September Term, to show cause, if any, it can, why a judgment obtained by it in the Knott Circuit Court against Eastern Kentucky Coal Lands Corporation at its March Term, 1907, should not be reversed for the errors therein contained, as we from its complaint are informed, and have then and there this writ.

Witness, J. Morgan Chinn, Clerk of our said Court, at the Capitol aforesaid, this 25th day of July, 1907.

J. MORGAN CHINN, *C. C. A.*,
By J. C. MORGAN, *D. C.*

[Endorsed:] Court of Appeals. Eastern Ky. Coal Lands Corporation vs. Com'th of Ky. Summons. 1 Cop. Issued. To Sept. Term, 1907. Knott County.

Executed by delivering to A. B. Stephens, Commonwealth's Attorney of the 31st Judicial District of Ky. and of Knott County by delivering to him a true copy of the within Summons on August 1st, 1907.

WM. STUMBO, *S. of C.*,
By J. B. JONES, *D. S.*

46 And with said copy of judgment there was filed a statement and which is in words and figures as follows, to-wit:

47 Kentucky Court of Appeals.

EASTERN KENTUCKY COAL LANDS CORPORATION, Appellant,
vs.
COMMONWEALTH OF KENTUCKY, Appellee.

Statement on Appeal.

The judgment appealed from herein was rendered by the Knott Circuit Court at its March term, 1907 on the 18th (eighteenth) day of March, 1907.

Appellant directs summons herein to be issued direct to the Sheriff of Knott County, Kentucky, to be served upon the County Attorney of Knott County, also summons directed to the Sheriff of Floyd County to be served upon the Commonwealth's attorney of the Circuit District of which Knott County is a part.

EASTERN KENTUCKY COAL LANDS CORPORATION.
By WM. J. HENDRICK,
Att'y for Appellant.

48 And afterwards there was filed in the office of the Clerk of the Court of Appeals, on the 19th day of November, 1908, a transcript of the record and which is in words and figures as follows, to-wit:

49 COMMONWEALTH OF KENTUCKY:

Knott County Court.

In the Matter of the Application of the EASTERN KENTUCKY COAL LANDS CORPORATION, INCORPORATED, to List for Assessment and Taxation and to Have Assessed the Taxes Which Ought to Have Been Assessed for the Years 1901, 1902, 1903, 1904, and 1905 on the Tracts of Land Hereinbelow Described.

To the County Court of the County of Knott:

The petitioner, the Eastern Kentucky Coal Lands Corporation, respectfully shows to this Honorable Court as follows:

I. Your petitioner is a corporation created under the laws of the Commonwealth of Virginia, and authorized under its said corporate name to purchase, acquire and hold lands and titles, claims and interests in, upon or affecting lands and appurtenances thereto, situated in all or any of the States of Kentucky, Virginia and West Virginia, and to do whatever may be deemed expedient to protect and enforce said titles, claims and interests, and, if it be deemed expedient, to improve and develop said lands or any parts thereof, or interests therein, by mining operations or otherwise, and to sell and convey, mortgage, lease or otherwise dispose of any or all such lands, titles, claims or interests aforesaid, or parts thereof, at one time or from time to time as may be deemed expedient.

II. Your petitioner claims to be an owner of the hereinbelow described tracts of land situated in the county of Knott, State of Kentucky, but not of the improvements thereon, nor of the surface of certain parts of said tracts as hereinafter stated, viz.:

First. All that part that is situated in said county of Knott, estimated to be not more than 5,000 acres, of all that tract of
50 land, containing 10,000 acres by survey dated the 4th day of May, 1787, then lying in the county of Bourbon, State of Virginia, now in the counties of Floyd, Pike, Knott and Letcher, in the State of Kentucky, and described in said surveys as follows: Beginning at the letter A, two sugar trees, being the South corner of I. Weaglesworth and Richard Young's survey of 10,000 acres in the line of Merry Walker's entry of 162,518 acres and with said Walker's line South 45 degrees West 1,000 poles to a white oak, thence North 45 degrees West 1,600 poles to two chestnut trees, thence North 45 degrees East 1,000 poles to a white oak, thence South 45 degrees East 570 poles to Weaglesworth and Young's West corner and with their line the same course continued in all 1,600 poles to the beginning; with its appurtenances.

Said part of said tract of land adjoins on its South side the county line; on its southwest side the "Third" tract herein described; and on its northwest side the "Fourth" tract herein described.

Second. All that part that is situated in said county of Knott, estimated to be not more than 3,058¼ acres, of all that tract of land, containing 12,058¾ acres by survey dated the 24th day of April, 1789, then lying in the county of Bourbon, State of Virginia, now in the counties of Letcher and Knott, State of Kentucky, granted by the State of Kentucky to George Lewis, assignee of Peter Grant, by Letter Patent dated the 16th day of October, 1795, recorded in Land Office of Kentucky, in Book 5, of Grants, page 214, and therein described as follows: Beginning at two white oaks, this being the most westwardly corner of a 20,000 acre survey made in the name of Merry Walker, also beginning corner of 18,520 acre survey made for Richard W. Shipp & Co., and corner to said Grant survey of 8,000 acres, thence with said Grant's line North 45 degrees West 1,600 poles to a corner to said Grant's survey of 8,000 acres to a sugar tree, thence South 45 degrees West 1,260 poles to an ash and poplar thence South 45 degrees East 1,600 poles to two white oaks to said Shipp's & Co. and with their line North 45 degrees East 1,260 poles to the beginning; with its appurtenances.

51 Said part of said tract of land adjoins on its south side the county line between Knott and Letcher counties; on its northwest side the "Sixth" tract herein described; and on its northeast side the "Third" tract herein described.

Third. All that part that is situated in said county of Knott, estimated to be not more than 2,000 acres of all that tract of land, containing 8,000 acres by survey dated the 25th day of April, 1789, then lying in the county of Bourbon, State of Virginia, now in the counties of Letcher and Knott, State of Kentucky, granted by the State of Kentucky to George Lewis, assignee of Peter Grant, by Letter Patent dated the 16th day of October, 1795, recorded in the Land Office of Kentucky, in Book 5 of Grants, page 213, and therein described as follows: Beginning at a white oak, corner to Michael Ryan's survey of 10,000 acres in Merry Walker's line, thence North 45 degrees West 1,600 poles with said Ryan's line to his corner, two chestnut trees, thence South 45 degrees West 800 poles to a sugar tree, corner to said Grant's 12,058¾ acres survey thence with the line of said survey South 45 degrees -ast 1,600 poles to the beginning, corner of said Grant's 12,058¾ acre survey at two white oaks in Merry Walker's line, thence with his line North 45 degrees East 800 poles to the beginning; with its appurtenances.

Said part of said tract of land adjoins on its south side the county line between Knott and Letcher counties; on its southwest side, the "Second" tract herein described; on its northwest side the "Fifth" tract herein described, and on its northeast side the "First" tract herein described.

Fourth. All that part that is situated in said county of Knott, estimated to be not more than 4,000 acres of all that tract of land, containing 6,000 acres by survey dated the 27th day of April, 1789, then lying in the county of Bourbon, State of Virginia, now in the counties of Knott and Floyd, State of Kentucky, on the waters of Big Sandy river, and granted by the State of Kentucky to George Lewis, assignee of William Grayson, by letter patent dated the 9th

day of August, 1795, recorded in the Land Office of Ken-
52 tucky, in Book 5 of Grants, page 158, and therein described as follows: Beginning at the north corner of Michael Ryan's ten thousand acre survey on the waters of Big Sandy at a white oak, thence with the said Ryan's line South 45 degrees West 1,000 poles to two chestnut trees, thence North 45 degrees West 960 poles to two ash trees, thence North 45 degrees East 1,000 poles to a sugar tree, thence South 45 degrees East 960 poles to the beginning; with its appurtenances.

Said part of said tract of land adjoins on its southeast side the "First" tract herein described, and on its southwest side the "Fifth" tract herein described.

Fifth. All that tract of land, containing 6,500 acres by survey dated the 27th day of April, 1789, then lying in the county of Bourbon, State of Virginia, now in the county of Knott, State of Kentucky, on the waters of Big Sandy river, and granted by the State of Kentucky to George Lewis, assignee of Thomas Keith by letters patent dated the 16th day of October, 1795, recorded in the Land Office of Kentucky, in Book 5 of Grants, page 212, and therein described as follows: Beginning at two chestnut trees, this being the south corner of the Hon. William Grayson's survey of 6,000 acres, the west corner of Michael Ryan's survey of 10,000 acres and the north corner of Peter Grant's survey of 8,000 acres, thence with Grant's line South 45 degrees West 800 poles to his corner and corner of his survey of 12,058¾ acres at a sugar tree, thence North 45 degrees West 1,300 poles to an ash and sugar tree, thence North 45 degrees East 800 poles to two dogwoods, thence South 45 degrees East 1,300 poles to the beginning; with its appurtenances.

Said tract of land adjoins on its southeast side the "Third" tract herein described, and on its southwest side the "Sixth" tract herein described.

Sixth. All that tract of land, containing 6,500 acres by survey dated the 27th day of April, 1789, then lying in the county of Bourbon, State of Virginia, now in the county of Knott, State of Kentucky, on the waters of Big Sandy river, and granted by the State of Kentucky to George Lewis, assignee of Thomas Keith, by letters patent dated the 16th day of October, 1795, recorded in
53 the Land Office of Kentucky in Book 5 of Grants, page 211, and therein described as follows: Beginning at the north corner of Peter Grant's survey of 12,058¾ acres, the west corner of his 8,000 acre survey, also south corner of said Keith's survey of 6,500 acres on part of this entry, a sugar tree, thence with said Keith's line North 45 degrees West 1,300 poles to his corner an ash and sugar tree, thence South 45 degrees West 800 poles to a poplar, thence South 45 degrees East 1,300 poles to three white oaks in the line of Peter Grant's 12,058¾ acre survey, thence with his line North 45 degrees East 800 poles to the beginning; with its appurtenances.

Said tract of land adjoins on its southeast side the "Second" tract herein described, and on its northeast side the "Fifth" tract herein described.

Seventh. All that part that is situated in said county of Knott,

estimated to be not more than 1,000 acres of all that tract of land, containing 6,250 acres by survey dated the 28th day of April, 1789, then lying in the county of Bourbon, State of Virginia, now in the county of Floyd and Knott, State of Kentucky, on the waters of Big Sandy river, and granted by the State of Virginia to George Lewis by letters patent dated the 20th day of May, 1790, recorded in the Land Office of Virginia, in Book 23 of Grants, page 211, and in the Land Office of Kentucky, in Book 11 of (Virginia) Grants, page 477, and therein described as follows: Beginning at a poplar, ash and sugar tree the west corner of James Garrard's survey of 23,250 acres, thence with Garrard's line South 45 degrees East 740 poles to a black oak, this being the north corner to said Hedgeman's survey of 6,250 acres on the part of this entry, thence with a line of the same South 45 degrees West 1,350 poles and three links to his corner an ash and dogwood, thence North 45 degrees West 740 poles to a white oak and poplar, thence North 45 degrees East 1,351 poles and three links to the beginning; with its appurtenances.

Said part of said tract of land adjoins on its southeast
54 side the "Eighth" tract herein described, and on its northwest and northeast sides the county line between Knott and Floyd counties.

Eighth. All that part that is situated in said county of Knott, estimated to be not more than 500 acres, of all that tract of land containing 6,250 acres by survey dated the 28th day of April, 1789, then lying in the county of Bourbon, State of Virginia, now mainly in the county of Floyd, State of Kentucky, on the waters of Big Sandy river, and granted by the State of Virginia to John Mountjoy, assignee of John Hedgeman, by letters patent dated the 14th day of December, 1790, recorded in the Land Office of Virginia, in Book 23 of Grants, page 357, and in the Land Office of Kentucky, in Book 11 of (Virginia) Grants, page 521, and therein described as follows: Beginning at two sugar trees corner to James Garrard's survey of 23,250 acres, thence with Garrard's line North 45 degrees West 740 poles to a black oak, thence South 45 degrees West 1,351 poles and three-tenths to an ash and dogwood, thence South 45 degrees East 740 poles to three dogwoods, thence North 45 degrees East 1,351 poles and three-tenths to the beginning; with its appurtenances.

Ninth. All that part that is situated in said county of Knott, estimated to be not more than 500 acres of all that tract of land containing 10,000 acres by survey dated the 30th day of April, 1789, then lying in the county of Bourbon, State of Virginia, now mainly in the county of Floyd, State of Kentucky, on the waters of Big Sandy river, and granted by the State of Virginia to George Lewis, assignee of George May, by letters patent dated the 21st day of May, 1790, recorded in the Land Office of Virginia, in Book 22 of Grants, page 210, and in the Land Office of Kentucky, in Book 15 of (Virginia) Grants, page 275, and therein described as follows: Beginning at a poplar, ash and sugar tree, corner to a survey of 6,250 acres in the name of John Hedgeman and west corner of James Garrard's sur-

vey of 23,250 acres, and south corner of George Lewis & Co. survey of 10,141¼ acres, thence with said Lewis' line North 45 degrees West 800 poles to said Lewis' corner, two sugar trees, thence South 45 degrees, West 2,000 poles to three ash trees, thence South 55 45 degrees East 800 poles to a poplar and ash, thence North 45 degrees East 2,000 poles to the beginning; with its appurtenances.

III. Your petitions- claim said tracts of land respectively under the grants stated respectively in the foregoing description of said tracts. The instruments through which title to each of said tracts devolved upon your petitioner are deeds from Charles B. Hillhouse, grantor to your petitioner, dated respectively the 21st and 24th days of December, 1906, not yet recorded, conveying all the right, title and interest of said Charles B. Hillhouse in and to each of said tracts of land, respectively, the title of said Hillhouse having been derived by deeds and contracts to convey to him from others claiming by inheritance, devise or mesne conveyances from those to whom said tracts of land respectively were granted as aforesaid by the letters patent above described respectively.

IV. Said tracts of land have not been listed for taxation for any of the years 1901, 1902, 1903, 1904 or 1905 by your petitioner, nor, as your petitioner is informed and believes, by any of those under whom your petitioner claims, nor have the taxes for any of said years been paid by your petitioner, nor, as your petitioner is informed and believes, by any of those under whom your petitioner claims; but your petitioner is informed and believes, and therefore avers and alleges that part of each of said tracts have been listed for taxation for each of said years by occupants and others than those under whom your petitioner claims, and that taxes for each of said years on parts of each of said tracts have been paid by said occupants or others.

V. Your petitioner does not claim to be the owner of any improvements on any of said tracts of land, nor of so much of the surface of said land as has been adversely held by other- for a period sufficiently to toll the petitioner's right of entry.

VI. Your petitioner is advised by counsel learned in the law and believes that in all of said years and now, under the laws of the Commonwealth of Kentucky, whenever the occupants or oc- 56 cupant of any part or parts of any of said tracts have paid the taxes thereon which those under whom your petitioner claims ought to have paid or ought to pay, the person so paying the tax shall be entitled to recover of the owner the amount of the tax so paid and the interest, which shall continue a lien on the property upon which such tax was paid.

VII. Your petitioner now files its petition under the provisions of Article III. of an Act of the Legislature of the Commonwealth of Kentucky, entitled "An Act relating to Revenue and Taxation," approved March 15, 1906, and applies to and asks this Honorable Court to ascertain the amount of unpaid taxes which your petitioner or those under whom your petitioner claims should have paid for

any and all of said years 1901, 1902, 1903, 1904 and 1905 and to make the assessment required by said act of the Legislature.

And as in duty bound, so your petitioner will ever pray.

EASTERN KENTUCKY COAL LANDS CORPORATION.
By SAMUEL HOWLAND HOPPIN, *President.*

STATE OF NEW YORK,
County of New York, ss:

Samuel Howland Hoppin, being duly sworn, says that he is the president and chief officer of the Eastern Kentucky Coal Lands Corporation, the petitioner above named; and that the Board of Directors of said corporation has authorized and directed that the foregoing petition of said corporation be duly verified under oath and filed; the deponent further says that the statements of the foregoing petitioners are true.

SAMUEL HOWLAND HOPPIN.

Subscribed and sworn to before me by Samuel Howland Hoppin, this 24th day of December, 1906.

My commission expires the 30th day of March, 1907.

[SEAL.] WALTER M. JACKSON,
Notary Public, New York Co.

57 COMMONWEALTH OF KENTUCKY,
County of Pike:

Rob't L. Miller states that he is the attorney of the above-named petitioner, the Eastern Kentucky Coal Lands Corporation, incorporated; that its chief officer is absent from the county and the statements of the foregoing petition are true.

Subscribed and sworn to before me by Rob't L. Miller this 27th day of December, 1906.

My commission expires the 5th day of December, 1910.

[SEAL.] J. LEE HATCHER,
Notary Public, Pike County.

Filed in the county clerk's office of Knott county this 29th day of December, 1906.

R. H. AMBURGEY,
Clerk of the Knott County Court.

Filed February 5, 1907.

L. C. SLONE, *C. K. C. C.*

Knott Circuit Court.

In the Matter of the Application of EASTERN KENTUCKY COAL LANDS CORPORATION to List for Assessment and Taxation Which Ought to Have Been Assessed for the Years 1901, 1902, 1903, 1904, and 1905 on the Lands Described in Its Petition.

Supersedeas on Appeal.

To the Honorable W. A. Combs, Judge of the Knott County Court:

Eastern Kentucky Coal Lands Corporation having taken an appeal to this court from a judgment rendered by you, on the 17th day of January, 1907, in the matter of application of Eastern Kentucky Coal Lands Corporation to list for assessment and taxation and to have assessed the taxes which ought to have been assessed for the years 1901, 1902, 1903, 1904, and 1905, on the lands described in its petition, against said Eastern Kentucky Coal Lands Corporation.

58 You are therefore ordered to stay all proceedings on said judgment and to transmit to the clerk's office of this court all original papers in said action.

Given under my hand as clerk of said court this 5th day of February, 1907.

L. C. SLONE,
Clerk of Knott Circuit Court.

Executed on W. A. Combs by delivering a true copy of the same this, the 5th day of February, 1907.

GEORGE HAYS, *S. K. C.*,
By FARRIS HAYS, *D. S.*

Knott Circuit Court.

In the Matter of the Application of EASTERN KENTUCKY COAL LANDS CORPORATION, to List for Assessment and Taxation and to Have Assessed the Taxes Which Ought to Have Been Assessed for the Years 1901, 1902, 1903, 1904, and 1905 on the Land Described in Its Petition.

Notice on Appeal.

To Jason Ritchie, County Attorney of Knott County:

You will take notice that the Eastern Kentucky Coal Lands Corporation has this day taken an appeal to the Floyd Circuit Court from a judgment rendered by the Knott County Court on the 17th day of January, 1907, in the matter of the application of the Eastern Kentucky Coal Lands Corporation to list for assessment and taxation and have assessed the taxes which ought to have been assessed for the years 1901, 1902, 1903, 1904, and 1905, and that said action will

stand for trial at the March term, 1907, of said Knott Circuit Court.

This February 5, 1907.

EASTERN KENTUCKY COAL LANDS CORPORATION,
By WM. J. HENDRICK, *Counsel.*

Executed in full by delivering a true copy of the within to Jason Ritchie, county attorney of Knott county, Ky., this February, 1907.

GEO. HAYS, *S. K. C.,*
By FARRIS HAYS, *D. S.*

59 COMMONWEALTH OF KENTUCKY:

Knott County Court.

January Special Term, January 17, 1907.

In the Matter of the Application of EASTERN KENTUCKY COAL LANDS CORPORATION, INCORPORATED, to List for Assessment and Taxation and to Have Assessed the Taxes Which Ought to Have Been Assessed for the years 1901, 1902, 1903, 1904, and 1905 on the Tracts of Land Described in This Petition.

Order.

Came the Eastern Kentucky Coal Lands Corporation, above petitioner and applicant, by its counsel, Wm. J. Hendrick, and the Commonwealth of Kentucky and County of Knott, by Jason Ritchie, county attorney of Knott county, and it appearing that notice, in writing, of hearing upon said application before the Knott County Court, on Thursday, January 17, 1907, had been duly executed upon said Jason Ritchie, the petitioner produced and offered to read in evidence the assessor's books of Knott county for the year 1906, from the clerk's office of the Knott County Court, and moved the court to assess the 20,058¾ acres claimed by it in Knott county at the sum of $1.00 per acre for the total acres listed for assessment, to which motion and offer to read the assessor's books in evidence the county attorney objected, and said objection and the matters arising upon said petition and application coming on to be heard, the cause was submitted to the court for judgment upon the petition, evidence and the exhibits and the entire record, and the court having heard the argument of counsel, and being sufficiently advised, adjudges said objection be sustained and that the said petition and application be, and the same is, now dismissed.

To which orders and judgment the petitioner, Eastern Kentucky Coal Lands Corporation, objects and excepts and prays an appeal to the Knott Circuit Court, which is granted upon the petitioner lodging the record herein with the clerk of the Knott Circuit Court within thirty days from the entry of this judgment.

60 COMMONWEALTH OF KENTUCKY,
County of Knott:

I, R. H. Amburgey, clerk of the Knott County Court, hereby certify that the foregoing two pages of typewritten matter *is* a true copy of the order and judgment entered in said proceedings on the 17th day of January, 1907, as the same remains on file and of record in my office.

Given under my hand this 5th day of February, 1907.

R. H. AMBURGEY,
Clerk of Knott County Court,
By JOHN STURGILL, *D. C.*

Filed February 5, 1907.

L. C. SLONE, *C. K. C. C.*

COMMONWEALTH OF KENTUCKY:

Knott Circuit Court.

March Term, 1st Day, March 18, 1907.

In the Matter of the Application of EASTERN KENTUCKY COAL LANDS CORPORATION, INCORPORATED, to List for Assessment and Taxation and to Have Assessed the Taxes Which Ought to Have Been Assessed for the Years 1901, 1902, 1903, 1904, and 1905 on the Tracts of Land Herein Below Described.

On Appeal from Judgment of the *Knox* County Court.

This proceeding, coming on in regular call, and the parties having announced ready, the same was submitted to court on the demurrer to and the motion to dismiss, and agreements of counsel were heard upon same, and the court as now advised, upon consideration of the petition and application, is of the opinion that Article III. of an act of the Legislature entitled "An Act Relating to Revenue and Taxation," approved March 15, 1906, and being chapter 22 of the Acts of the Legislature of the Session of 1906, is a lawful exercise of the legislative power of this State, but the court sustains the demurrer to the petition and application for the reason that in the opinion of the court the said petition and application is insufficient in that it does not comply with the mandatory provisions of said article, and
61 for other good and sufficient reason apparent on the face of the petition and application. It is further ordered and adjudged that the motion to dismiss the petition and application be, and the same is now, sustained, and the petition and application be, and the same is now, dismissed.

It is further adjudged that the Commonwealth recover of the petitioner, the Eastern Kentucky Coal Lands Corporation, its cost in this and the lower courts expended.

STATE OF KENTUCKY,
Knott County, ss:

I, L. C. Slone, clerk of the Circuit Court, in and for the county and State aforesaid, do certify that the above and foregoing pages contain a true, full and complete copy of the entire record in the case of the application of Eastern Kentucky Coal Lands Corporation, incorporated, to list for assessment and taxation, and to have assessed the taxes which ought to have been assessed for the years 1901, 1902, 1903, 1904, and 1905, on the lands described in its petition as shown by the records in my said office.

Given under my hand, as clerk of said court, this 23d day of May, 1907.

L. C. SLONE,
Clerk Knott Circuit Court.

COMMONWEALTH OF KENTUCKY:

Knott Circuit Court.

In the Matter of the Application of EASTERN KENTUCKY COAL LANDS CORPORATION, INCORPORATED, to List for Assessment and Taxation and to Have Assessed for Taxes Which Ought to Have Been Assessed for the Years 1901, 1902, 1903, 1904, and 1905 Upon the Lands Described in This Petition.

Schedule.

Now comes the petitioner, Eastern Kentucky Coal Lands Corporation, and directs the clerk of the Knott Circuit Court to make complete copy of all pleadings, order, judgments and entire record
62 of all papers on file in the office of the clerk of the Knott Circuit Court in the above style matter and application, and deliver same to the petitioner as a transcript to be used on appeal from the judgment therein rendered to the Court of Appeals of Kentucky.

EASTERN KENTUCKY COAL LANDS CORP.,
By WM. J. HENDRICK,
Att'y and Counsel for Petitioner.

Filed May 18, 1907.

L. C. SLONE, *C. K. C. C.*

63 EASTERN KENTUCKY COAL LANDS CORPORATION, Appellant,
vs.
COMMONWEALTH OF KENTUCKY, Appellee.

Appeal from Floyd Circuit Court.

Be it remembered that on the 27th day of August, 1907, the appellee by its attorney filed in the office of the Clerk of the Court of Appeals a transcript of the record and which is in words and figures as follows:

64 **Pleas Before the Hon. D. W. Gardner, Judge of the Thirty-first Judicial District of Kentucky.**

Be it remembered that on the 30th day of January, 1907, came the petitioners, The Eastern Kentucky Coal Lands Corporation, and filed in the office of the Clerk of the Floyd Circuit Court its appeal, which is in words and figures as follows:

State of Kentucky, Floyd County Court.

Special January Term, January 14, 1907.

COMMONWEALTH OF KENTUCKY:

Floyd County Court.

In the Matter of the Application of EASTERN KENTUCKY COAL LANDS CORPORATION, INCORPORATED, to List for Assessment and Taxation and to Have Assessed the Taxes Which Ought to Have Been Assessed for the Years 1901, 1902, 1903, 1904 and 1905 on the Tracts of Land Described in its Petition.

Order.

Came the Eastern Kentucky Coal Lands Corporation, the above-named petitioner and applicant, by its counsel, Wm. J. Hendrick, and the Commonwealth of Kentucky and the County of Floyd, by A. J. May, county attorney of Floyd county, and it appearing that notice, in writing, of hearing upon said application before the Floyd County Court, on Monday, January the 14th, 1907, had been duly executed upon the said A. J. May, the petitioner produced and offered to read in evidence the assessor's books of Floyd county, for the year 1906, from the clerk's office of the Floyd County
65 Court, and moved the court to assess the 88,415 acres claimed by it in Floyd county, at the sum of $1.00 per acre for the total acres listed for assessment, to which motion and offer to read the assessor's books in evidence the county attorney objected, and said objection and the matters arising upon said petition and application coming on to be heard, the cause was submitted to the court for judgment upon the petition, evidence and exhibits, and the entire record, and the court having heard the argument of counsel, and being sufficiently advised, adjudges said objections be sustained, and that the said petition and application be, and the same is now dismissed.

To which orders and judgment, the petitioner, Eastern Kentucky Coal Lands Corporation, objects and excepts and prays an appeal to the Floyd Circuit Court, which is granted upon the petitioner lodging the record herein with the clerk of the Floyd Circuit Court within thirty days from the entry of this judgment.

COMMONWEALTH OF KENTUCKY,
County of Floyd, ss:

I, G. R. Davidson, clerk of the Floyd County Court, do certify that the foregoing is a true copy of the order and judgment entered in said proceeding on the 14th day of January, 1907, as the same remains on file and of record in my office.

Given under my hand this 26th day of January, 1907.

G. R. DAVIDSON,
Clerk of Floyd County Court,
By SAM PORTER, *D. C.*

Filed January 30, 1907:

A. L. MARTIN, *C. F. C. C.*
By L. P. MAYO, *D. C.*

Here follows a copy of an appeal bond, executed upon the filing of the foregoing, which is in words and figures as follows:

66 *Appeal Bond.*

Floyd Circuit Court.

In the Matter of the Application of EASTERN KENTUCKY COAL LANDS CORPORATION to List for Assessment and Taxation and to Have Assessed the Taxes Which Ought to Have Been Assessed for the Years 1901, 1902, 1903, 1904 and 1905 on the Lands Described in its Petition.

Appeal from a Judgment Rendered by Floyd County Court.

The Eastern Kentucky Coal Lands Corporation, having prayed an appeal to the Floyd Circuit Court from a judgment of the Floyd County Court, now we covenant that the said Eastern Kentucky Coal Lands Corporation will satisfy and perform the judgment of the court that shall be rendered upon the appeal.

Witness our hands, this 30th day of January, 1907.

F. T. HATCHER.

Attest:
A. L. MARTIN, *Clerk,*
By L. P. MAYO, *D. C.*

Here follows a copy of the supersedeas, which issued on the foregoing appeal, and which is in words and figures as follows:

Floyd Circuit Court.

In the Matter of the Application of the EASTERN KENTUCKY COAL LANDS CORPORATION to List for Assessment and Taxation and to Have Assessed the Taxes Which Ought to Have Been Assessed for the Years 1901, 1902, 1903, 1904 and 1905 on the Lands Described in its Petition.

Supersedeas on Appeal.

To the Honorable J. P. Harris, Judge of the Floyd County Court:

Eastern Kentucky Coal Lands Corporation, having taken an appeal to this court from a judgment rendered by you on the 14th day of January, 1907, in the matter of the application of Eastern Kentucky Coal Lands Corporation to list for assessment and taxation and have assessed the taxes which ought to have been assessed for the years 1901, 1902, 1903, 1904 and 1905 on the lands de-
67 scribed in its petition, against said Eastern Kentucky Coal Lands Corporation.

You are therefore ordered to stay all proceedings on said judgment and to transmit to the clerk's office of this court all original papers in said action.

Given under my hand as clerk of said court, this 30th day of January, 1907.

A. L. MARTIN,
Clerk of Floyd Circuit Court.
By L. P. MAYO, *D. C.*

Here follows a copy of the sheriff's return on the foregoing supersedeas, which is in words and figures as follows:

Executed in full by delivering a true copy of the within to James P. Harris, judge of the Floyd County Court, this January 30, 1907.

WM. STUMBO,
Sheriff of Floyd County, Ky.
By J. B. JONES, *D. S.*

Here follows a copy of the notice which issued on the foregoing appeal and which is in words and figures as follows:

Floyd Circuit Court.

In the Matter of the Application of EASTERN KENTUCKY COAL LANDS CORPORATION to List for Assessment and Taxation and to Have Assessed the Taxes Which Ought to Have Been Assessed for the years 1901, 1902, 1903, 1904 and 1905 on the Lands Described in its Petition.

Notice on Appeal.

To A. J. May, County Attorney of Floyd County:

You will take notice that the Eastern Kentucky Coal Lands Corporation has this day taken an appeal to the Floyd Circuit Court from a judgment rendered by the Floyd County Court on the 14th day of January, 1907, in the matter of the application of the Eastern Coal Lands Corporation to list for assessment and taxation and have assessed the taxes which ought to have been assessed for the
68 years 1901, 1902, 1903, 1904 and 1905, and that said action will stand for trial at the February term, 1907, of said Floyd Circuit Court. This January 30, 1907.

EASTERN KENTUCKY COAL LANDS CORP.,
By WM. J. HENDRICK, *Counsel.*

The sheriff's return on the foregoing notice is in words and figures as follows:

Executed in full by delivering a true copy of the within to A. J. May, county attorney of Floyd county, this January 30, 1907.

WM. STUMBO,
Sheriff Floyd County,
By J. B. JONES, *D. S.*

Here follows a copy of the petition in the above styled cause which is in words and figures as follows:

COMMONWEALTH OF KENTUCKY:

Floyd County Court.

In the Matter of the Application of EASTERN KENTUCKY COAL LANDS CORPORATION, INCORPORATED, to List for Assessment and Taxation and to Have Assessed the Taxes Which Ought to Have Been Assessed for the Years 1901, 1902, 1903, 1904, and 1905 on the Tracts of Land Herein Below Described.

To the County Court of the County of Floyd:

The petitioner, the Eastern Kentucky Coal Lands Corporation, respectfully shows to this Honorable Court as follows:

I. Your petitioner is a corporation created under the laws of the Commonwealth of Virginia and authorized under its said corporate

name to purchase, acquire and hold lands and titles, claims and interests in, upon or affecting lands and appurtenances thereto situated in all or any of the States of Kentucky, Virginia and West Virginia, and to do whatever may be deemed expedient to protect and enforce said titles, claims and interests, and if it be deemed expedient, to improve and develop said lands or any parts thereof,
69 or interests therein by mining operations or otherwise and to sell and convey, mortgage, lease or otherwise dispose of any or all such lands, titles, claims and interests aforesaid, or parts thereof at one time or from time to time as may be deemed expedient.

II. Your petitioner claims to be an owner of the hereinbelow described tracts of land situated in the county of Floyd, State of Kentucky, but not of the improvements thereon, nor of the surface of certain parts of said tracts, as hereinafter stated, viz.:

First. All that part that is situated in said county of Floyd, estimated to be not more than 500 acres, of all that tract of land, containing 14,280 acres of survey dated the 30th day of April, 1787, then lying in the county of Bourbon, State of Virginia, now mainly in the county of Pike, State of Kentucky, on the waters of Big Sandy river, granted by the State of Virginia to Benjamin Robinson, Richard Young and John Robinson by Letters Patent, dated the 21st day of January, 1792, recorded in the Land Office of Virginia, in Book 24 of Grants, page 481, and in the Land Office of Kentucky, in Book 14 of (Virginia) Grants, page 376, and therein described as follows: Beginning at a walnut, sugar tree, hickory and lynn, lower corner of an entry of 162,518 acres in the name of Merry Walker, thence with the lower line of said entry South 45 degrees West 2,500 poles, crossing Shelby creek to two white oaks, thence North 45 degrees West 1,024 poles to two white oaks, thence North 45 degrees East 2,200 poles to three sugar trees on the bank of Sandy, thence up Sandy as it meanders South 246 poles, South 85 degrees East 172 poles, North 70 degrees East 236 poles, South 20 degrees East 88 poles, South 35 degrees West 140 poles, South 45 degrees East 196 poles, South 35 degrees East 160 poles, North 35 degrees East 100 poles to the mouth of Shelby's creek, continued 180 poles further, South 80 degrees East 72 poles South 60 degrees East 160 poles to the beginning; with its appurtenances.

Said part of said tract of land adjoins on its southwest side the "Second" tract herein described, and on its northwest side the "Third" tract herein described.

70 Second. All that part that is situated in said county of Floyd, estimated to be not more than 6,000 acres, of all that tract of land, containing 16,000 acres by survey dated the 3d day of May, 1787, then lying in the county of Bourbon, State of Virginia, now mainly in the counties of Pike and Floyd, State of Kentucky, on the waters of Big Sandy river, and granted by the State of Virginia to John Weaglesworth and Richard Young, by letters patent dated the 21st day of January, 1792, recorded in the Land Office of Virginia, in Book 25 of Grants, page 404, and in the Land Office of Kentucky, in Book 14 of (Virginia) Grants, page 515, and therein described as follows: Beginning at two white oaks the south corner of

Benjamin Robinson, Richard Young and John Robinson survey of 14,280 acres, and on the line of Merry Walker entry of 162,518 acres, and with said Walker's line South 45 degrees West 2,500 poles, crossing several small branches of Shelby's creek to two sugar trees, thence North 45 degrees West 1,024 poles to two chestnut oaks, thence North 45 degrees East 2,500 poles to two white oaks, thence South 45 degrees East 1,024 poles to the beginning, with its appurtenances.

Said part of said tract of land adjoins on its southeast side the county line between Floyd and Pike counties; on its southwest side, the "Sixteenth" tract herein described; on its northwest side, the "Fourth and Seventh" tracts herein described, and on its northeast side, the "First" tract herein described.

Third. All that part that is situated in said county of Floyd, estimated to be not more than 7,246 acres, of all that tract of land, containing 15,246 acres by survey, dated the first day of May, 1787, then lying in the county of Bourbon, State of Virginia, now in the counties of Pike and Floyd, State of Kentucky, on the waters of Big Sandy river, granted by the State of Virginia to William Robinson, Michael Robinson, Junior, John Robinson, Benjamin Robinson, Mary McGee, Betsy Robinson, Michael Robinson, Henry Robinson, James Robinson, John Robinson, William McGee and Thomas McGee, by letters patent dated the 21st day of January, 1792, re-
71 corded in the Land Office of Virginia, in Book 24 of Grants, page 485, and in the Land Office of Kentucky, in Book 14 of (Virginia) Grants, page 379, and therein described as follows: Beginning at the three sugar trees lower corner of Benjamin Robinson and Company's survey of 14,280 acres, thence with the lower line of said survey South 45 degrees West 2,200 poles to their west corner, two white oaks, thence North 45 degrees West 1,108 8/10 poles to two sugar trees, thence North 45 degrees East 2,200 poles to a poplar, thence South 45 degrees East 1,108 8/10 poles to the beginning, with its appurtenances.

Said part of said tract of land adjoins on its east and southeast side the county line between Floyd and Pike counties; on its southwest side the "Fourth" and "Fifth" tracts herein described; on its northwest side the "Eighth" tract herein described.

Fourth. All that part that is situated in said Floyd county, estimated to be not more than 4,000 acres, of all that tract of land containing 5,000 acres by survey dated the 5th day of May, 1787, then lying in the county of Bourbon, State of Virginia, now in the counties of Floyd and Pike, State of Kentucky, on the waters of Big Sandy river, and granted by the State of Kentucky to Preeson Bowdoin and Richard Young by letters patent dated the 8th day of March, 1793, recorded in the Land Office of Kentucky, in Book 3 of Grants, page 34, and therein described as follows: Beginning at two white oaks, it being the west corner of Benjamin Robinson and Company's survey of 14,280 acres and corner to Weaglesworth's and Young's survey of 16,000 acres, thence with said Weaglesworth's and Young's line South 45 degrees West 1,300 poles to a sugar tree, thence North 45 degrees West 615 3/10 poles to a poplar; thence

North 45 degrees East 1,300 poles, crossing some small branches to two white oaks in the line of William Robinson and Company's survey of 15,246 acres, thence with the line of said survey South 45 degrees East 615 3/10 poles to the beginning; with its appurtenances.

Said part of said tract of land adjoins on its southeast side
72 the county line between Floyd and Pike counties and the "Second" tract herein described; on its southwest side the "Seventh" tract herein described; on its northwest side the "Fifth" and "Sixth" tracts herein described; and on its northeast side the "Third" tract herein described.

Fifth. All that tract of land containing 1,450 acres by survey dated the 5th day of May, 1787, then lying in the county of Bourbon, State of Virginia, now in the county of Floyd, State of Kentucky, on the waters of Big Sandy river, and granted by the State of Virginia to Michael Robinson and Richard Graves by letters patent dated the 21st day of January, 1792, recorded in the Land Office of Virginia, in Book 24 of Grants, page 482, and in the Land Office of Kentucky in Book 14 of (Virginia) Grants, page 377, and therein described as follows: Beginning at two white oaks, it being Bowden's north corner in the line of William Robinson and Company's survey of 15,246 acres, thence with Bowden's line South 45 degrees West 500 poles to a black oak, thence North 45 degrees West 473 6-10 poles to two sugar trees, thence North 45 degrees East 500 poles to two white oaks (crossing two small branches) in the line of William Robinson and Company's survey, thence South 45 degrees East 473 6-10 poles to the beginning; with its appurtenances.

Said tract of land adjoins on its southeast side the "Fourth" tract herein described; on its southwest side the "Sixth" tract herein described, and on its northeast side the "Third" tract herein described.

Sixth. All that tract of land containing 1,546¾ acres by survey dated the 6th day of May, 1787, then lying in the county of Bourbon, State of Virginia, now in the county of Floyd, State of Kentucky, on the waters of Big Sandy river, and granted by the State of Virginia to William Richardson and Richard Young by letters patent dated the 23d day of January, 1792, recorded in the Land Office of Virginia, in Book 25 of Grants, page 406, and in the Land Office of Kentucky in Book 14 of (Virginia) Grants, page 516, and therein described as follows: Beginning at a black oak, it being the
south corner of Michael Robinson's and Richard Graves' sur-
73 vey of 1,450 acres in the line of Presley Bowden's and Richard Young's survey of 5,000 acres, thence with Bowden's and Young's line South 45 degrees West 500 poles to a black oak, thence North 45 degrees West 494 7-10 poles to a sugar tree, thence North 45 degrees East 500 poles to two white oaks, thence South 45 degrees East 494 7-10 poles to the beginning; with its appurtenances.

Said tract of land adjoins on its southeast side the "Fourth" tract herein described; on part of its southwest side the "Fourteenth" tract herein described; and on part of its northeast side the "Fifth" tract herein described.

Seventh. All that tract of land containing 3,121¾ acres by survey dated the 6th day of May, 1787, then lying in the county of Bourbon, State of Virginia, now in the county of Floyd, State of Kentucky, on the waters of Big Sandy river, and granted by the State of Virginia to John Stewart and Richard Young by letters patent dated the 23d day of January, 1792, recorded in the Land Office of Virginia, in Book 24 of Grants, page 484, and in the Land Office of Kentucky in Book 14 of (Virginia) Grants, page 378, and therein described as follows: Beginning at a sugar tree, it being the south corner of Bowdoin's and Young's survey of 5,000 acres in the line of John Weagleworth and Richard Young's survey of 16,000 acres, thence with said Weagleworth and Young's line South 45 degrees West 800 poles to two sugar trees, thence North 45 degrees West 624 3-10 poles to two ashes, thence North 45 degrees East 800 poles, crossing a small branch to two sugar trees, thence South 45 degrees East 624 3-10 poles to the beginning; with its appurtenances.

Said tract of land adjoins on its southeast side the "Second" tract herein described; and on its northeast side the "Fourth" tract herein described.

Eighth. All that part that is situated in said county of Floyd, estimated to be not more than 20,000 acres of all that tract of land containing 23,250 acres by survey dated the 15th day of September, 1788, then lying in the county of Bourbon, State of Virginia, now in the counties of Floyd and Pike, State of Kentucky, on the waters of Big Sandy river, and granted by the State of Vir-
74 ginia to James Garrard by Letters Patent dated the 19th day of October, 1789, recorded in the Land Office of Virginia in Book 21 of Grants, page 533 and in the Land Office of Kentucky in Book 12 of (Virginia) Grants, page 339, and therein described as follows: Beginning at a poplar the North corner of William Robertson's, etc., survey of 15,246 acres thence South 45 degrees West 2,200 poles to said Robertson's, etc., West corner at two sugar trees, thence North 45 degrees West 1,480 poles to a poplar, ash and sugar tree; thence North 45 degrees East 2,020 poles to three buckeyes, six sugar trees and two walnut trees standing on the bank of Sandy immediately below the mouth of Bear creek, thence up Sandy binding thereon 1,250 poles on a reduced line to a buckeye and sugar tree, thence leaving Sandy and running South 3 degrees West 530 poles to the beginning; with its appurtenances.

Said part of said tract of land adjoins on its southeast side the "Third" tract herein described; on its southwest side the "Twelfth" and "Thirteenth" tracts herein described; on its northwest side the "Eleventh" tract herein described; and on its northeast and east sides the Levisa fork of Sandy river and the county line between Floyd and Pike counties.

Ninth. All that tract of land containing 3,725¼ acres by survey dated the 25th day of April, 1788, then lying in the county of Bourbon, State of Virginia, now in the county of Floyd, State of Kentucky, on the waters of Big Sandy river, granted to the State of Virginia to Lewis Lunsford by Letters Patent dated the 27th day of February, 1790, recorded in the Land Office of Virginia, in Book

21 of Grants, page 643, and in the Land Office of Kentucky, in Book 12 of (Virginia) Grants, page 376, and therein described as follows: Beginning at a sugar tree, three buckeyes, an ash and walnut standing on the bank of Sandy at the upper end of a large cane bottom, thence South 45 degrees West 700 poles to a walnut and ash, thence North 45 degrees West 750 poles crossing some small branches to a white oak and poplar, thence North 45 degrees East 645 poles to five sugar trees standing on the bank of Sandy, thence up Sandy as it meanders, 1,260 poles to the beginning; with its appurtenances.

75 Said tract of land adjoins on its southeast side the "Eleventh" tract herein described; on its northwest side the "Tenth" tract herein described; and on its northeast side the Levisa fork of Sandy river.

Tenth. All that tract of land, containing 4,434 acres by survey dated the 10th day of April, 1788, then lying in the county of Bourbon, State of Virginia, now in the county of Floyd, State of Kentucky, on the waters of Big Sandy river, and granted by the State of Virginia to George Lewis, assignee of William Durrett, for 2,956 acres, and to said William Durrett for 1,478 acres by Letters Patent dated the 20th day of May, 1790, recorded in the Land Office of Virginia, in Book 23 of Grants, page 206, and in the Land Office of Kentucky in Book 11 of (Virginia) Grants, page 475, and described as follows: Beginning at the lower corner of Sandy of Lewis Lunceford's survey of 3,725¼ acres, at five sugar trees standing on the bank of Sandy, thence with said Lunceford's line South 45 degrees West 1,100 poles to three sugar trees, thence North 45 degrees West 640 poles to a white oak and dogwood, thence North 45 degrees East 1,158 poles to two sugar trees standing on the bank of Sandy, thence up Sandy and binding thereon 640 poles to a straight line to the beginning; with its appurtenances.

Said tract of land adjoins on part of its southeast side the "Ninth" tract herein described; and on its northeast side the Levisa fork of Sandy river.

Eleventh. All that tract of land, containing 10,141¼ acres, by survey dated the 28th day of April, 1789, then lying in the county of Bourbon, State of Virginia, now in the county of Floyd, State of Kentucky, on the waters of Big Sandy river, and granted by the State of Virginia to George Lewis by Letters Patent dated the 20th day of May, 1790, recorded in the Land Office of Virginia, in Book 22 of Grants, page 195, and in the Land Office of Kentucky, in Book 15 of (Virginia) Grants, page 265, and therein described as follows: Beginning at the lower corner on Sandy of James Garrard's survey of 23,250 acres at the lower side of the mouth of a small creek, three buckeyes, six sugar trees and two walnut
76 trees, thence down Sandy binding thereon 810 poles on a straight line to a sugar tree, a buckeye, an ash and walnut standing on the bank of Sandy on the upper end of a large cane bottom and upper corner to Lewis Lunsford's survey of 3,725¼ acres, thence with Lunsford's line South 45 degrees West 700 poles to his corner a walnut and ash, continued South 45 degrees West in all

2,220 poles to two sugar trees, thence South 45 degrees East 800 poles crossing a creek to a poplar, ash and sugar tree, corner to said Garrard's 23,250 acre survey, and with his line North 45 degrees East 2,020 poles to the beginning; with its appurtenances.

Said tract of land adjoins on its southeast side the "Eighth" tract herein described; and on its southwest side "Fifteenth" tract herein described; on part of its northwest side the "Ninth" tract herein described; and on its northeast side the Levisa fork of Sandy river.

Twelfth. All that part that is situated in said county of Floyd, estimated to be not more than 5,750 acres, of all that tract of land containing 6,250 acres by survey dated the 28th day of April, 1789, then lying in the county of Bourbon, State of Virginia, now mainly in the county of Floyd, State of Kentucky, on the waters of Big Sandy river, and granted by the State of Virginia to John Mountjoy, assignee of John Hedgeman, by letters patent dated the 14th day of December, 1790, recorded in the Land Office of Virginia, in Book 23 of Grants, page 357, and in the Land Office of Kentucky in Book 11 of (Virginia) Grants, page 521, and therein described as follows: Beginning at two sugar trees corner to James Garrard's survey of 23,250 acres, thence with Garrard's line North 45 degrees West 740 poles to a black oak, thence South 45 degrees West 1,351 poles and three-tenths to an ash and dogwood, then South 45 degrees East 740 poles to three dogwoods, thence North 45 degrees East 1,351 poles and three-tenths to the beginning; with its appurtenances.

Said part of said tract of land adjoins on its northwest side the "Thirteenth" tract herein described; and on its northeast side the "Eighth" tract herein described.

77 Thirteenth. All that part that is situated in said county of Floyd, estimated to be not more than 5,250 acres, of all that tract of land, containing 6,250 acres by survey dated the 28th day of April, 1789, then lying in the county of Bourbon, State of Virginia, now in the counties of Floyd and Knott, State of Kentucky, on the waters of Big Sandy river, and granted by the State of Virginia to George Lewis, by letters patent dated the 20th day of May, 1790, recorded in the Land Office of Virginia, in Book 23 of Grants, page 211, and in the Land Office of Kentucky, in Book 11 of (Virginia) grants, page 477, and therein described as follows: Beginning at a poplar, ash and sugar tree the west corner of James Garrard's survey of 23,250 acres, thence with Garrard's line South 45 degrees East 740 poles to a black oak, this being the north corner to said Hedgeman's survey of 6,250 acres on part of this entry, thence with the line of the same South 45 degrees West 1,350 poles and 3 links to his corner, to an ash and dogwood; thence North 45 degrees West 740 poles to a white oak and poplar, thence North 45 degrees East 1,351 poles and 3 links to the beginning; with its appurtenances.

Said part of said tract of land adjoins on its southeast side the "Twelfth" tract herein described; on its northwest side the "Fifteenth" tract herein described; and on its northeast side the "Eighth" tract herein described.

Fourteenth. All that tract of land, containing 250 acres by survey

dated the 29th day of April, 1789, then lying in the county of Bourbon, State of Virginia, now in the county of Floyd, State of Kentucky, on the waters of Big Sandy river, and granted by the State of Virginia to George Lewis by letters patent dated the 20th day of May, 1770, recorded in the Land Office of Virginia in Book 22 of Grants, page 192, and in the Land Office of Kentucky, in Book 15 of (Virginia) Grants, page 263, and therein described as follows: Beginning at a black oak in Presley Boden and Richard Young's line of their 5,000 acre survey and corner to William Richard's and Richard Young's survey of 1,546¾ acres, and with their line
North 45 degrees West 200 poles to two sugar trees, thence
78 South 45 degrees West 200 poles to an ash, thence South 45 degrees East 200 poles to a hickory, North 45 degrees East 200 poles to the beginning; with its appurtenances.

Said tract of land adjoins on its southeast side the "Fourth" tract herein described; and on its northeast side the "Sixth" tract herein described.

Fifteenth. All that part that is situated in said county of Floyd, estimated to be not more than 9,500 acres, of all that tract of land containing 10,000 acres by survey dated the 30th day of April, 1789, then lying in the county of Bourbon, State of Virginia, now mainly in the County of Floyd, State of Kentucky, on the waters of Big Sandy river, and granted by the State of Virginia to George Lewis, assignee of George May, by letters patent dated the 21st day of May, 1790, recorded in the Land Office of Virginia, in Book 22 of Grants, page 210, and in the Land Office of Kentucky, in Book 15 of (Virginia) Grants, page 275, and therein described as follows: Beginning at a poplar, ash and sugar tree, corner to survey of 6,250 acres in the name of John Hedgeman, and west corner of James Garrard's survey of 23,250 acres, and south corner of George Lewis and Company's survey of 10,141¼ acres, thence with said Lewis' line North 45 degrees West 800 poles to said Lewis' corner two sugar trees, thence South 45 degrees West 2,000 poles to three ash trees, thence South 45 degrees East 800 poles to a poplar and ash, thence North 45 degrees East 2,000 poles to the beginning; with its appurtenances.

Said part of said tract of land adjoins on part of its southeast side the "Thirteenth" tract therein described; and on its northeast side the "Eleventh" tract herein described.

Sixteenth. All that part that is situated in said county of Floyd, estimated to be not more than 3,000 acres, of all that tract of land, containing 10,000 acres by survey dated the 4th day of May, 1787, then lying in the county of Bourbon, State of Virginia, now in the counties of Floyd, Pike, Knott and Letcher, in the State of Kentucky, and described in said survey as follows: Beginning at
79 the Letter A, two sugar trees, being the south corner of I. Weagleworth and Richard Young's survey of 10,000 acres in the line of Merry Walker's entry of 162,518 acres and with said Walker's line South 45 degrees West 1,000 poles to a white oak, thence North 45 degrees West 1,600 poles to two chestnut trees, thence North 45 degrees East 1,000 poles to a white oak, thence South 45 degrees East 570 poles to Weaglesworth and Young's west corner

and with their line the same course continued in all 1,600 poles to the beginning; with its appurtenances.

Said parts of said tract of land adjoin on its south and southwest side the county line, and on part of its northeast side the "Second" tract herein described.

Seventeenth. All that part that is situated in said county of Floyd, estimated to be not more than 2,000 acres, of all that tract of land, containing 6,000 acres by survey, dated the 27th day of April, 1789, then lying in the county of Bourbon, State of Virginia, now in the counties of Knott and Floyd, State of Kentucky, on the waters of Big Sandy river, and granted by the State of Kentucky to George Lewis, assignee of William Grayson, by letters patent dated the 9th day of August, 1795, recorded in the Land Office of Kentucky, in Book 5 of Grants, page 158, and therein described as follows: Beginning at the north corner of Michael Ryan's ten thousand acre survey on the waters of Big Sandy at a white oak, thence with said Ryan's line South 45 degrees West 1,000 poles to two chestnut trees, thence North 45 degrees West 960 poles to two ash trees, thence North 45 degrees East 1,000 poles to a sugar tree, thence South 45 degrees East 960 poles to the beginning; with its appurtenances.

Said part of said tract of land adjoins on its southeast side the "Sixteenth" tract herein described.

Eighteenth. All that part that is situated in said county of Floyd, estimated to be not more than 500 acres, of all that tract of land, containing 8,000 acres by survey dated the 25th of April, 1789, then lying in the county of Bourbon, State of Virginia, now in the counties of Letcher and Knott, State of Kentucky, granted by the State of Kentucky to George Lewis, assignee of Peter Grant, by
80 letters patent dated the 16th day of October, 1795, recorded in the Land Office of Kentucky, in Book 5 of Grants, page 213, and therein described as follows: Beginning at a white oak corner to Michael Ryan's survey of 10,000 acres in Merry Walker's line, thence North 45 degrees West 1,600 poles with said Ryan's line to his corner two chestnut trees, thence South 45 degrees West 800 poles to a sugar tree corner to said Grant's 12,058¾ acres survey, thence with the line of said survey South 45 degrees East 1,600 poles to the beginning corner of said Grant's 12,058¾ acre survey at two white oaks in Merry Walker's line, thence with his line North 45 degrees East 800 poles to the beginning; with its appurtenances.

III. Your petitioner claims said tracts of land respectively under the grants stated respectively in the foregoing descriptions of said tracts; and the instruments through which title to each of said tracts devolved upon your petitioner are deeds from Charles B. Hillhouse, grantor to your petitioner, grantee, dated respectively the *21st* and *24th* day of December, 1906, not yet recorded, conveying all the right, title and interest of said Charles B. Hillhouse, in and to each of said tracts of land respectively, the title of said Hillhouse having been derived by deeds and contracts to convey to him by others claiming by inheritance, devise or mesne conveyances from those to whom said tracts of land respectively were granted as aforesaid by the letters patent above described respectively.

IV. Said tracts of land have not been listed for taxation for any

of the years 1901, 1902, 1903, 1904 or 1905 by your petitioner, nor, as your petitioner is informed and believes, by any of those under whom your petitioner claims, nor have the taxes for any of said years been paid by your petitioner, nor, as your petitioner is informed and believes, by any of those under whom your petitioner claims; but your petitioner is informed and believes and therefore avers and alleges that parts of each of said tracts have been listed for taxation for each of said years by occupants and others than those under whom your petitioner claims, and that taxes for each of said
81 years on parts of each of said tracts have been paid by said occupants or others.

V. Your petitioner does not claim to be the owner of any improvements on any of said tracts of land, nor of so much of the surface of said land as has been adversely held by others for a period sufficient to toll the petitioner's right of entry.

VI. Your petitioner is advised by counsel learned in the law, and believes that in all of said years and now, under the laws of the Commonwealth of Kentucky, whenever the occupant or occupants of any part or parts of any of said tracts have paid the taxes thereon which those under whom your petitioner claims ought to have paid or ought to pay, the person so paying the tax shall be entitled to recover of the owner the amount of the tax so paid and interest, which shall continue a lien on the property upon which such tax was paid.

VII. Your petitioner now files its petition under the provisions of Article III of an act of the Legislature of the Commonwealth of Kentucky, entitled "An Act Relating to Revenue and Taxation," approved March 15, 1906, and applies to and asks this Honorable Court to ascertain the amount of unpaid taxes which your petitioner or those under whom your petitioner claims should have paid for any and all of said years 1901, 1902, 1903, 1904 and 1905, and to make the assessments required by said act of the Legislature.

And as in duty bound, so your petitioner will ever pray.

EASTERN KENTUCKY COAL LANDS CORPORATION,
By SAMUEL HOWLAND HOPPIN,
President.

STATE OF NEW YORK,
County of New York, ss:

Samuel Howland Hoppin, being duly sworn, says that he is the president and chief officer of the Eastern Kentucky Coal Lands Corporation, the petitioner above named; and that the Board of Directors of said corporation has authorized and directed that the foregoing petition of said corporation be duly verified under oath and
82 filed; and deponent further says that the statements of the foregoing petition are true.

SAMUEL HOWLAND HOPPIN.

Subscribed and sworn to before me by Samuel Howland Hoppin this 24th day of December, 1906.

[SEAL.] WALTER M. JACKSON,
Notary Public, New York Co.

My commission expires the 30th day of March, 1907.

COMMONWEALTH OF KENTUCKY,
County of Floyd, ss:

F. A. Hopkins states that he is the attorney of the above named petitioner, the Eastern Kentucky Coal Lands Corporation; that its chief officer is absent from the county and that the statements of the foregoing petition are true.

F. A. HOPKINS.

Subscribed and sworn to before me by F. A. Hopkins, this 27th day of December, 1906.

My commission expires March 1, 1910.

[SEAL.] JOSEPH D. HARKINS,
Notary Public, Floyd Co., Ky.

The foregoing petition is endorsed on the back in words and figures as follows:

Filed December 27, 1906.

G. R. DAVIDSON, *C. F. C. C.*

And also the foregoing petition is endorsed upon the back as follows:

Filed January 30, 1907.

A. L. MARTIN, *C. F. C. C.*,
By L. P. MAYO, *D. C.*

Here follows a copy of an order entered on the 25th day of February, 1907, filing motion to dismiss the petition and application and also filing demurrer to the same, which order is in words and figures as follows:

83 Floyd Circuit Court, February Term, 5th Day, 25th Day of February, 1907.

In the Matter of the Application of the EASTERN KENTUCKY COAL LANDS CORPORATION, INCORPORATED, to List for Assessment and Taxation and to Have Assessed the Taxes Which Ought to Have Been Assessed for the Years 1901, 1902, 1903, 1904, and 1905 on the Tracts of Land Described in its Petition.

Order.

Came appellee, Commonwealth of Kentucky, and entered motion to dismiss the application and petition herein and also the appeal herein and without waiving said motion filed general demurrer to the application and petition.

Here follows a copy of the motion to dismiss, which is in words and figures as follows:

Floyd Circuit Court.

In the Matter of the Application of the EASTERN KENTUCKY COAL LANDS CORPORATION, INCORPORATED, to List for Assessment and Taxation and to Have Assessed the Taxes Which Ought to Have Been Assessed for the Years 1901, 1902, 1903, 1904, and 1905 on the Tracts of Land Described in Its Petition.

Motion to Dismiss Application and Petition.

Comes now the appellee, the Commonwealth of Kentucky, and moves the court to dismiss the application and petition herein and also the appeal herein.

A. B. STEPHENS,
Commonwealth's Attorney, Floyd Circuit Court.

Filed February 25, 1907.

A. L. MARTIN, *C. F. C. C.*,
By L. P. MAYO, *D. C.*

Here follows a copy of the demurrer which is in words and figures as follows:

84 Floyd Circuit Court.

In the Matter of the Application of the EASTERN KENTUCKY COAL LANDS CORPORATION, INCORPORATED, to List for Assessment and Taxation and to Have Assessed the Taxes Which Ought to Have Been Assessed for the Years 1901, 1902, 1903, 1904, and 1905 on the Tracts of Land Described in Its Petition.

Demurrer.

The appellee, the Commonwealth of Kentucky, not waiving its right to insist upon its motion to dismiss this case, but specially reserving the same, comes and demurs to the application and petition of appellant, because the same does not state facts sufficient to constitute or support a cause of action.

A. B. STEPHENS,
Commonwealth's Attorney, Floyd Circuit Court.

Filed February 25, 1907.

A. L. MARTIN, *C. F. C. C.*,
By L. P. MAYO, *D. C.*

Here follows a copy of an order entered on the 26th day of February, 1907, which is in words and figures as follows:

Floyd Circuit Court, February Term, 2d Day, 26th Day of February, 1907.

In the Matter of the Application of the EASTERN KENTUCKY COAL LANDS CORPORATION, INCORPORATED, to List for Assessment and Taxation, and to Have Assessed the Taxes Which Ought to Have Been Assessed for the Years 1901, 1902, 1903, 1904, and 1905 on the Tracts of Land Described in Its Petition.

Order.

On the first day of the February term, 1907, of the Floyd Circuit Court, the day upon which the Appearance Ordinary Cases, by custom of this court is called, and on the calling of the above entitled matter came Hon. A. B. Stephens, Commonwealth's Attorney for this district, and entered a motion to dismiss the application, petition and appeal of petitioners, and without waiving said motion,
85 filed general demurrer to said application and petition.

Whereupon petitioner, by T. H. Harman, its counsel, moved that the hearing upon said motion, demurrer and the whole case be set down for a hearing upon a later day of the present term of this court, which said motion the court sustained. Whereupon said motion, demurrer and the whole case are now set for hearing on the thirteenth (13th) day of the present term of this court, upon which day by order of court and agreement of counsel, the same shall be heard.

Here follows a copy of the judgment rendered in the above styled matter on the 12th day of March, 1907, which is in words and figures as follows:

Floyd Circuit Court, 14th Day of February Term, 12th Day of March, 1907.

In the Matter of the Application of the EASTERN KENTUCKY COAL LANDS CORPORATION, INCORPORATED, to List for Assessment and Taxation and to Have Assessed the Taxes Which Ought to Have Been Assessed for the Years 1901, 1902, 1903, 1904, and 1905 on the Tracts of Land Hereinbelow Described.

On Appeal from Judgment of the Floyd County Court.

This proceeding coming on in regular call, and the parties having announced ready, the same was submitted to the court upon the demurrer to, and the motion to dismiss, the petition and application and arguments of counsel were heard upon same.

And the court, as now advised, upon consideration of the petition and application is of the opinion that Article III of an act of the Legislature entitled "An Act Relating to Revenue and Taxation," approved March 15, 1906, and being chapter 22 of the Acts of the

Legislature of the Session of 1906, is a lawful exercise of the legislative power of this State; but the court sustains the demurrer to the petition and application for the reasons that in the opinion of
86 the court, the said petition and application is insufficient in that it does not comply with the mandatory provisions of said article, and for other good and sufficient reasons apparent on the face of the petition and application.

It is further ordered and adjudged that the motion to dismiss the petition and application be, and the same is, now sustained, and that the petition and application be, and the same is now, dismissed.

It is further adjudged that the Commonwealth recover of the petitioner, the Eastern Kentucky Coal Lands Corporation, its costs in this and in the lower court expended.

87 STATE OF KENTUCKY.
Floyd County:

Floyd Circuit Court.

I, A. L. Martin, Clerk of the Floyd Circuit Court, do certify that the foregoing transcript is a true and correct copy of the entire record in the cause or proceeding lately pending therein, ex parte and styled "In the matter of the Application of Eastern Kentucky Coal Lands Corporation, incorporated, to list for assessment and for taxation, and to have assessed the taxes which ought to have been assessed for the years 1901, 1902, 1903, 1904 and 1905 on the tracts of land hereinbelow described."

Witness my hand as Clerk of the Floyd Circuit Court, this the 24th day of August, 1907.

A. L. MARTIN,
Clerk of the Floyd Circuit Court,
By JIM H. SPRADLIN,
Deputy Clerk.

88 And with said transcript there was filed a statement, and which is in words and figures as follows, to-wit:

89 Court of Appeals of Kentucky.

Case No. 297.

EASTERN KENTUCKY COAL LANDS CORPORATION, Appellant,
vs.
COMMONWEALTH OF KENTUCKY, Appellee.

Appeal from the Floyd Circuit Court.

Statement on Appeal.

The names of the Appellant and Appellee are as shown in the caption hereof.

The judgment appealed from was rendered at the February term,

'07 of the Floyd Circuit Court, and may be found on page 29 (85) of the record.

The transcript having been filed by the Appellee, no summons is necessary or desired by it.

COMMONWEALTH OF KENTUCKY,
By N. B. HAYS, *Attorney General.*
CHAS. H. MORRIS,
Assistant Attorney General.
HAGER & STEWART.
T. H. PAYNTER.

W. H. WADSWORTH,
DAVID BAIRD,
Z. T. VINSON,
Of Counsel.

90 EASTERN KENTUCKY COAL LANDS CORPORATION, Appellant,
vs.
COMMONWEALTH OF KENTUCKY, Appellee.

Be it remembered that on the 27th day of August, 1907, the appellee by its attorney filed in the office of the Clerk of the Court of Appeals a transcript of the record herein, and which is in words and figures as follows:

91 COMMONWEALTH OF KENTUCKY:

Pike Circuit Court.

In the Matter of the Application of the EASTERN KENTUCKY COAL LANDS CORPORATION, INCORPORATED, to List for Assessment and Taxation and to Have Assessed the Taxes Which Ought to Have Been Assessed for the Years 1901, 1902, 1903, 1904, and 1905 on the Tracts of Land Hereinbelow Described.

On Appeal from Judgment of the Pike County Court.

Comes now the Commonwealth of Kentucky, by J. F. Butler, Commonwealth Attorney for this judicial district, and demurs generally to the petition and application herein, because the same does not state facts sufficient to constitute, maintain or support a cause of action, or to authorize or justify the court to grant the relief prayed for, or any other relief, or to take any steps whatsoever thereunder.

COMMONWEALTH OF KENTUCKY,
By JOHN F. BUTLER,
Commonwealth's Attorney.

Filed May 7, 1907.

J. B. POLLEY, *Clerk.*

COMMONWEALTH OF KENTUCKY:

Pike Circuit Court.

In the Matter of the Application of EASTERN KENTUCKY COAL LANDS CORPORATION, INCORPORATED, to List for Assessment and Taxation and to Have Assessed the Taxes Which Ought to Have Been Assessed for the Years 1901, 1902, 1903, 1904, and 1905 on the Tracts of Land Hereinbelow Described.

On Appeal from Judgment of the Pike County Court.

Motion to Dismiss Petition and Application.

Comes now the Commonwealth of Kentucky, by J. F. Butler, Commonwealth's Attorney for this judicial district, and moves
92 the court to dismiss the petition and application in the above-entitled matter because the same is wholly insufficient in substance and in form to authorize the granting of the relief prayed for, or any other relief.

COMMONWEALTH OF KENTUCKY,
By JNO. F. BUTLER,
Commonwealth's Attorney.

Filed May 7, 1907.

J. B. POLLEY, *Clerk.*

COMMONWEALTH OF KENTUCKY:

Pike Circuit Court.

In the Matter of the Application of the EASTERN KENTUCKY COAL LANDS CORPORATION, INCORPORATED, to List for Assessment and Taxation and to Have Assessed the Taxes Which Ought to Have Been Assessed for the Years 1901, 1902, 1903, 1904, and 1905 on the Tracts of Land Hereinbelow Described.

On Appeal from Judgment of the Pike County Court.

Came the Commonwealth of Kentucky, by J. F. Butler, Commonwealth's Attorney for this district, and entered motion and moved the court to dismiss the appeal herein, and without waiving same, filed written motion to dismiss the petition and application, and without waiving either of the same filed general demurrer to the petition and application herein.

Pike Circuit Court.

In the Matter of the Application of the EASTERN KENTUCKY COAL LANDS CORPORATION to List for Assessment and Taxation and to Have Assessed the Taxes Which Ought to Have Been Assessed for the Years 1901, 1902, 1903, 1904, and 1905 on the Lands Described in Its Petition.

Notice on Appeal.

To C. C. Bowles, County Attorney of Pike County:

You will take notice that Eastern Kentucky Coal Lands Corporation has this day taken an appeal to the Pike Circuit Court
93 from a judgment rendered by the Pike County Court on the 15th day of January, 1907, in the matter of the application of Eastern Kentucky Coal Lands Corporation to list for assessment and taxation and to have assessed the taxes which ought to have been assessed for the years 1901, 1902, 1903, 1904 and 1905, and that said action will stand for trial at the May term, 1907, of said Pike Circuit Court.

To all of which you will please take notice. This Feb. 7, 1907.

EASTERN KENTUCKY COAL LANDS CORP.,
By WM. J. HENDRICK, *Counsel.*
THOMAS H. HARMAN, *Attorney.*

Executed the within notice by delivering a true copy thereof to C. C. Bowles, County Attorney, this 7th day of February, 1907.

J. A. SCOTT, *S. P. C.*,
By —— ——, *D. S.*

Pike Circuit Court.

In the Matter of the Application of the EASTERN KENTUCKY COAL LANDS CORPORATION to List for Assessment and Taxation and to Have Assessed the Taxes Which Ought to Have Been Assessed for the Years 1901, 1902, 1903, 1904, and 1905 on the Lands Described in Its Petition.

Supersedeas on Appeal.

To the Honorable John W. Ford, Judge of the Pike County Court:

Eastern Kentucky Coal Lands Corporation having taken an appeal to this court from a judgment rendered by you on the 15th day of January, 1907, in the matter of the application of Eastern Kentucky Coal Lands Corporation to list for assessment and taxation and have assessed the taxes which ought to have been assessed for the years 1901, 1902, 1903, 1904, and 1905, on the lands described in

its petition, against said Eastern Kentucky Coal Lands Corporation,

94 You are therefore ordered to stay all proceedings on said judgment and to transmit to the clerk's office of this court all original papers in said action.

Given under my hand as clerk of said court, this 7th day of February, 1907.

J. B. POLLEY,
Clerk of Pike Circuit Court.

Executed the within notice by delivering a true copy thereof to J. W. Ford, Judge Pike County Court, this 12th day of February, 1907.

J. A. SCOTT, *S. P. C.*,
By —— ——, *D. S.*

COMMONWEALTH OF KENTUCKY,
County of Pike, set:

To C. C. Bowles, Esq., County Attorney of Pike County, Kentucky:

You will please take notice that the Eastern Kentucky Coal Lands Corporation has this day filed its petition in the office of the clerk of the Pike County Court, under the provisions of Article III of an act of the Legislature of Kentucky, entitled "An act relating to Revenue and Taxation," approved March 15, 1906, seeking to list its lands in Pike county, for assessment and taxation under the provisions of said act, and that Tuesday, January 15, 1907, has been fixed as a day upon which said application shall be heard.

Of all which you are hereby given notice.

EASTERN KENTUCKY COAL LANDS CORP.,
By T. H. HARMAN, *Attorney.*

Dec. 27, 1906.

Executed the within notice by delivering a true copy thereof to C. C. Bowles, Co. Att'y, this 27th day of Dec., 1906.

J. A. SCOTT, *S. P. C.*,
By —— ——, *D. S.*

95 COMMONWEALTH OF KENTUCKY:

Pike County Court.

In the Matter of the Application of the EASTERN KENTUCKY COAL LANDS CORPORATION, INCORPORATED, to List for Assessment and Taxation and to Have Assessed the Taxes Which Ought to Have Been Assessed for the years 1901, 1902, 1903, 1904, and 1905 on the Tracts of Land Hereinbelow Described.

To the County Court of the County of Pike:

The petitioner, the Eastern Kentucky Coal Lands Corporation, respectfully shows to this Honorable Court as follows:

I. Your petitioner is a corporation created under the laws of the Commonwealth of Virginia, and authorized under its said corporate name to purchase, acquire and hold lands and titles, claims and interests in, upon or affecting lands and appurtenances thereto, situated in all or any of the State of Kentucky, Virginia and West Virginia, and to do whatever may be deemed expedient to protect and enforce said titles, claims and interests, and if it be deemed expedient, to improve and develop said lands or any parts thereof or interest therein by mining operation or otherwise, and to sell and convey, mortgage, lease or otherwise dispose of any or all such lands, titles, claims and interests aforesaid, or parts thereof, at one time, or from time to time, as may be deemed expedient.

II. Your petitioner claims to be an owner of the hereinbelow described tracts of land, situated in the county of Pike, State of Kentucky, but not of the improvements thereon, nor of the surface of certain parts of each tract, as hereinafter stated, viz:

First. All that tract of land, containing 7,537 acres by survey, dated the 17th day of April, 1787, then lying in the county of Bourbon, State of Virginia, now in the county of Pike, State of Kentucky, on the waters of Big Sandy river, and granted by the State of Virginia to John Walker, Robert Johnson and Reuben Twyman by letters patent dated the 16th day of December,
96 1789, recorded in the Land Office of Virginia, in Book 21 of Grants, page 562, and in the Land Office of Kentucky, in Book 12 of (Virginia) Grants, page 354, and therein described as follows: Beginning at two poplars and hickory, on the bank of Sandy, where the county line strikes said Sandy river, thence down Sandy North 20 degrees West 160 poles, West 20 poles, South 50 poles, West 30 poles, North 60 degrees West 40 poles, North 32 degrees West 160 poles, North 85 degrees West 160 poles to the mouth of a branch, North 18 degrees East 60 poles, North 55 degrees West 80 poles, South 35 degrees West 520 poles to two ashes, a sugar tree and lynn, leaving Sandy and running South 45 degrees West 1,101¾ poles to two white oaks, thence South 45 degrees East 1,131 poles to a chestnut, North 45 degrees East 1,101¾ poles to the beginning; with its appurtenances.

Said tract of land adjoins on its southeast side the State line between Kentucky and Virginia; on its southwest side the "Fourth" tract herein described; on its northwest side the "Fourth" tract herein described; on its northeast side the "Seventeenth" tract herein described.

Second. All that tract of land containing 4,060 acres by survey dated the 18th day of April, 1787, then lying in the county of Bourbon, State of Virginia, now in the county of Pike, State of Kentucky, on the southwest side of the Levisa-Russell Fork of the Big Sandy river, and granted by the State of Virginia to John Craig, assignee of Merry Walker, by letters patent dated the 4th day of February, 1790, recorded in the Land Office of Virginia, in Book 21 of Grants, page 553, and in the Land Office of Kentucky, in Book 12 of (Virginia) Grants, page 352, and therein described as follows: Beginning at the lower side of the mouth of Craig's creek

on the bank of Sandy at poplar and ash, thence down Sandy and binding thereon North 15 degrees East 240 poles, North 85 degrees West 100 poles, South 42 degrees West 92 poles, South 60 degrees West 52 poles, South 75 degrees West 86 poles, North 20 degrees West 280 poles, North 56 degrees West 360 poles North 45
97 degrees West 180 poles, North 25 degrees West 204 poles to two sugar trees, thence South 45 degrees West 530 poles to a stake, thence South 45 degrees East 1,200 poles to two maples and poplar, thence North 45 degrees East 541 poles to the beginning; with its appurtenances.

Said tract of land adjoins on its southeast side the "Fourth" tract herein described; on its southwest side the "Sixth" tract herein described; on its northwest side the "Third" tract herein described, and on its northeast side the "Eighteenth" tract herein described.

Third. Al that tract of land containing 5,940 acres, by survey dated the 18th day of April, 1787, then lying in the county of Bourbon, State of Virginia, now in the county of Pike, State of Kentucky, on the southwest side of the Levisa-Russell Fork of the Big Sandy river, and granted by the State of Virginia to John Craig, assignee of Merry Malker, by letters patent dated the 2d day of February, 1790, recorded in the Land Office of Virginia, in Book 21 of Grants, page 547, and in the Land Office of Kentucky, in Book 12 of (Virginia) Grants, page 348, and therein described as follows: Beginning at the lower corner on Sandy of said Walker's survey of 4,060 acres at two sugar trees, thence down Sandy as it meanders North 45 degrees East 114 poles, North 5 degrees West 234 poles, North 25 degrees West 160 poles, North 75 degrees West 140 poles, North 40 degrees West 212 poles to the mouth of Elkhorn, North 50 degrees West 108 poles, North 65 degrees West 170 poles, North 45 degrees 180 poles, North 60 degrees West 80 poles to a walnut, sugar tree, hickory and lynn, thence South 45 degrees West 672 poles to a white oak, thence South 45 degrees East 1,180 poles, crossing Elkhorn, to a stake corner to said Walker's 4,060 acres survey, thence with the line of said survey North 45 degrees East 530 poles to the beginning; with its appurtenances.

Said tract of land adjoins on its southwest side the "Second" tract herein described; on its southwest side the "Sixth" tract herein described; on its northwest side the "Eleventh" tract herein described, and on its northeast side the "Eighteenth" tract herein described.

98 Fourth. All that part that is situated in said county of Pike, estimated to be not more than 11,000 acres, of all that tract of land containing 20,000 acres by survey dated the 17th day of April, 1787, then lying in the county of Bourbon, State of Virginia, now partly in the county of Pike, State of Kentucky, and partly in the State of Virginia, on the waters of Big Sandy river, and granted by the State of Virginia to Daniel Duvall and Charles Marshall, assignee of said Duvall, by letters patent dated the 14th day of December, 1789, recorded in the Land Office of Virginia, in Book 21 of Grants, page 447, and in the Land Office of Kentucky, in Book 12 of (Virginia) Grants, page 317, and therein described

as follows: Beginning at the upper corner on the bank of Sandy of a survey of 4,060 acres made in the name of Merry Walker, said survey is the upper survey on Sandy that was made for said Walker by virtue of part of his entry of 162,518 acres that was not withdrawn, to begin at the lower side of the mouth of Craig's creek at an ash poplar, thence up Sandy with its meanders South 26 degrees East 160 poles, North 68 degrees East 168 poles, South 35 degrees East 120 poles, to two ashes, a sugar tree and lynn (this being the lower corner on Sandy of a survey made for John Walker and Company, that was located in the same place that John Fowler's entry was withdrawn from), thence with the line of said survey South 45 degrees West 1,101¾ poles to two white oaks, thence with another of his lines South 45 degrees East 1,131 poles to a chestnut tree, thence South 45 degrees West 1,959 poles to a stake, thence North 45 degrees West 1,460 poles to two sugar trees in the line of the 40,518 acres that was withdrawn from the middle of said Walker's entry, thence with a line of same North 45 degrees East to the corner of a 20,000 acre survey for said Walker, and with a line of the same, the same course to the corner of the first mentioned 4,060 acres survey and with the line of same the same course, the whole amounting to 2,939¾ poles to the beginning; with its appurtenances.

Said part of said tract of land adjoins on its southeast side
99 the tract "First" herein described and the State line between Kentucky and Virginia; on its southwest side the "Fifth" tract herein described; on its northwest side the "Seventh," "Sixth" and "Second" tracts herein described, and on its northeast side the "Seventeenth" and "First" tracts herein described.

Fifth. All that part that is situated in said county of Pike, estimated to be not more than 2,000 acres of all that tract of land containing 20,000 acres by survey, dated the 18th day of April, 1787, then lying in the county of Bourbon, State of Virginia, now partly in the county of Pike, State of Kentucky, and partly in the State of Virginia, on the waters of Big Sandy river, and granted by the State of Virginia to Richard Adams by letters patent, dated the 24th day of February, 1790, recorded in the Land Office of Virginia in Book 21 of Grants, page 670, and in the Land Office of Kentucky in Book 12 of (Virginia) Grants, page 384, and therein described as follows: Beginning on the most Westwardly corner of Daniel Duval's and Charles Marshall's survey of 20,000 acres, at two sugar trees, thence with the line of the same South 45 degrees East 1,460 poles to a stake, thence South 45 degrees West 2,191¾ poles to three chestnut trees, thence North 45 degrees West 1,460 poles to two sugar trees, thence North 45 degrees East 2,191¾ poles to the beginning; with its appurtenances.

Said part of said tract of land adjoins on its southeast side the State line between Kentucky and Virginia, on its northwest side the "Ninth" and "Seventh" tracts herein described; and on its northeast side the "Fourth" tract herein described.

Sixth. All that tract of land containing 20,000 acres, by survey dated the 19th day of April, 1787, then lying in the county of Bour-

bon, State of Virginia, now in the county of Pike, State of Kentucky, on the waters of the Big Sandy River, and granted by the State of Virginia to John Craig, assignee of Merry Walker, by letters patent, dated the 4th day of February, 1790, recorded in the Land Office of Virginia, in Book 21 of Grants, page 551, and in the Land Office of Kentucky, in Book 12 of (Virginia) Grants, page 351; and therein described as follows: Beginning at a white oak, it being
100 the West corner of said Walker's survey of 5,940 acres, and with the back line of said survey South 45 degrees East 1,180 poles to a 4,060 acre survey of said Walker's and with the back line of said survey the same course 1,200 poles to the South corner of said survey, two maples and poplar, thence South 45 degrees West 1,344 poles to a sugar tree, poplar and walnut, thence North 45 degrees, West 2,380 poles to two red oaks, thence North 45 degrees East 1,344 poles to the beginning, with its appurtenances.

Said tract of land adjoins on its southeast side the "Fourth" tract herein described; on its southwest side the "Seventh" tract herein described; on its northwest side the "Eleventh" tract herein described; and on its northeast side the "Second" and "Third" tracts herein described.

Seventh. All that part that is situated in said county of Pike, estimated to be not more than 38,918 acres of all that tract of land, containing 40,418 acres by survey dated the 15th day of March, 1788, then lying in the county of Bourbon, State of Virginia, now mainly in the county of Pike, State of Kentucky, on the waters of Big Sandy river and granted by the State of Kentucky, to John May and David Ross by letters patent dated the 11th day of April, 1794, recorded in the Land Office of Kentucky in Book 3 of Grants page 514, and therein described as follows: Beginning at two red oaks this being the West corner of a survey of 20,000 acres made the 19th of April, 1787, for Merry Walker, thence South 45 degrees East 2,380 poles to a sugar tree, poplar and walnut, said Walker's South corner, thence South 45 degrees West 2,717 poles to two sugar trees, a poplar and lynn at the head of a spring, thence North 45 degrees West 1,120 poles to a large lick the same course continued in all 2,380 poles, crossing several branches of Shelby creek, thence North 45 degrees East 2,717 poles crossing main Shelby creek to the beginning; with its appurtenances.

Said part of said tract of land adjoins on its southeast side the "Fourth" and "Fifth" tracts herein described; on its southwest side the "Eighth" and "Ninth" tracts herein described; on its northwest side the "Eleventh" and "Twelfth" tracts herein described; and on its northeast side the "Sixth" tract herein described.

101 Eighth. All that part that is situated in said county of Pike, estimated to be not more than 4,000 acres of all that tract of land containing 5,000 acres, by survey dated the 22d day of April, 1787, then lying in the county of Bourbon, now in the counties of Pike and Letcher, State of Kentucky, in part on the waters of the Big Sandy river, and granted by the State of Virginia to John Craig, assignee of Merry Walker, by letters patent dated the 4th day of February, 1790, recorded in the Land Office of Virginia,

in Book 21 of Grants, page 550, and in the Land Office of Kentucky, in Book 12 of (Virginia) Grants, page 351; and therein described as follows: Beginning at two chestnut oaks, being the West corner of the 40,518 acres that was withdrawn from the said entry, thence, *thence* South 45 degrees East 1, 190 poles to a sugar tree, thence South 45 degrees West 672 poles to a stake, thence North 45 degrees West 1,190 poles to two white oaks, thence North 45 degrees East 672 poles to the beginning, with its appurtenances.

Said part of said tract of land adjoins on its southeast side the "Ninth" tract herein described; on its southwest side, the "Tenth" tract herein described; on its northwest side the "Thirteenth" tract herein described; and on its northeast side the "Seventh" tract herein described.

Ninth. All that part that is situated in said county of Pike, estimated to be not more than 250 acres, of all that tract of land containing 5,000 acres, by survey dated the 23d day of April, 1787, then lying in the county of Bourbon, State of Virginia, now in the counties of Pike and Letcher, State of Kentucky, in part on the waters of the Big Sandy river, and granted by the State of Virginia to John Craig, assignee of Merry Walker, by letters patent dated the 2d day of February, 1790, recorded in the Land Office of Virginia, in Book 21 of Grants, page 549, in the Land Office of Kentucky, in Book 12 of (Virginia) Grants, page 350; and therein described as follows: Beginning at a sugar tree, the East corner of said Walker's survey of 5,000 acres and with a line of said survey South 45 degrees West 672 poles to a stake, thence South 45 degrees East 1,190 poles to two white oaks, thence North 45 de-
102 grees East 672 poles to two sugar trees, a poplar and lynn, thence North 45 degrees West 1,120 poles to a large lick, continued in all 1,190 poles to the beginning, with its appurtenances.

Said part of said tract of land adjoins on its southeast side the "Fifth" tract herein described; on its southwest side the "Tenth" tract herein described; on its northwest side the "Eight" tract herein described; and on its northeast side the "Seventh" tract herein described.

Tenth. All that part that is situated in said county of Pike, estimated to be not more than 4,000 acres of all that certain tract of land containing 20,000 acres by survey dated the 24th day of April, 1787, then lying in the county of Bourbon, State of Virginia, now in the counties of Pike and Letcher, in the State of Kentucky, and granted by the State of Virginia to John Craig, assignee of Merry Walker, by letters patent dated the 4th day of February, 1790, recorded in the Land Office of Virginia, in Book 22 of Grants, page 25, and in the Land Office of Kentucky in Book 15 of (Virginia) Grants, page 211, and therein described as follows: Beginning at two white oaks, it being the West corner of said Walker's survey of 5,000 acres, thence with said survey South 45 degrees East 1,190 poles crossing some of the branches of Shelby's creek to West corner of another survey of 5,000 acres in the name of said Walker and with the line of said survey the same course of 1,190 poles to two white oaks, thence South 45 degrees West 1,344 poles to two red oaks,

thence North 45 degrees West 2,380 poles crossing some of the branches of Shelby's creek to two white oaks, thence North 45 degrees East 1,344 — to the beginning, with its appurtenances.

Said part of said tract of land adjoins on its southeast side the State line between Kentucky and Virginia; on its northwest side the "Thirteenth" tract herein described; and on its northeast side the "Eighth" and "Ninth" tracts herein described.

Eleventh. All that part that is situated in said county of Pike, estimated to be not more than 13,780 acres, of all that tract of land, containing 14,280 acres by survey, dated the 30th day of April, 1787, then lying in the county of Bourbon, State of Virginia, now
103 mainly in the county of Pike, State of Kentucky, on the waters of Big Sandy river, granted by the State of Virginia to Benjamin Robinson, Richard Young and John Robinson by letters patent dated the 21st day of January, 1792, recorded in the Land Office of Virginia, in Book 24 of Grants, page 481, and in the Land Office of Kentucky, in Book 14 of (Virginia) Grants, page 376, and therein described as follows: Beginning at a walnut, sugar tree, hickory and lynn, lower corner of an entry of 162,518 acres in the name of Merry Walker, thence with the lower line of said entry South 45 degrees West 2,500 poles, crossing Shelby creek to two white oaks, thence North 45 degrees West 1,024 poles to two white oaks, thence North 45 degrees East 2,200 poles to three sugar trees on the bank of Sandy, thence up Sandy as it meanders South 246 poles, South 85 degrees East 172 poles, North 70 degrees East 236 poles, South 20 degrees East 88 poles, South 35 degrees West 140 poles, South 45 degrees East 196 poles, South 35 degrees East 160 poles, North 35 degrees East 100 poles to the mouth of Shelby's creek, continued 180 poles further, South 80 degrees East 72 poles, South 60 degrees East 160 poles to the beginning, with its appurtenances.

Said tract of land adjoins on its southeast side the "Third," "Sixth" and "Seventh" tracts herein described; on its southwest side the "Twelfth" tract herein described; on its northwest side the "Fourteenth" tract herein described, and on its northeast side the Levisa fork of Sandy river.

Twelfth. All that part that is situated in said county of Pike, estimated to be not more than 10,000 acres, of all that tract of land, containing 16,000 acres by survey dated the 3d day of May, 1787, then lying in the county of Bourbon, State of Virginia, now mainly in the counties of Pike and Floyd, State of Kentucky, on the waters of Big Sandy river and granted by the State of Virginia to John Weaglesworth and Richard Young by letters patent dated the 21st day of January, 1792, recorded in the Land Office of Vir-
104 ginia, in Book 25 of Grants, page 404, and in the Land Office of Kentucky, in Book 14 of (Virginia) Grants, page 515, and therein described as follows: Beginning at two white oaks the south corner of Benjamin Robinson, Richard Young and John Robinson survey of 14,280 acres, and on the line of Merry Walker entry of 162,518 acres and with said Walker's line South 45 degrees West 2,500 poles, crossing several small branches of Shelby's creek to two sugar trees, thence North 45 degrees East 1,024 poles to two chest-

nut oaks, thence North 45 degrees East 2,500 poles to two white oaks, thence South 45 degrees East 1,024 poles to the beginning; with its appurtenances.

Said part of said tract of land adjoins on its southeast side the "Seventh" tract herein described; on its southwest side the "Thirteenth" tract herein described, and on its northwest side the county line between Pike and Floyd counties and the "Fifteenth" tract herein described, and on its northeast side the "Eleventh" tract herein described.

Thirteenth. All that part that is situated in said county of Pike, estimated to be not more than 1,000 acres, of all that tract of land, containing 10,000 acres by survey dated the 4th day of May, 1787, then lying in the county of Bourbon, State of Virginia, now in the counties of Floyd, Pike, Knott and Letcher, in the State of Kentucky, and described in said survey as follows: Beginning at the Letter A, two sugar trees, being the south corner of I. Weaglesworth's and Richard Young's survey of 16,000 acres in the line of Merry Walker's entry of 162,518 acres and with said Walker's line South 45 degrees West 1,000 poles to a white oak, thence North 45 degrees West 1,600 poles to two chestnut trees, thence North 45 degrees East 1,000 poles to a white oak, thence South 45 degrees East 570 poles to Weaglesworth and Young's west corner, and with their line the same course continued in all 1,600 poles to the beginning; with its appurtenances.

Said part of said tract of land adjoins on part of its south-
105 east side the "Eighth" tract herein described; on its southwest and northwest sides the county line, and on its northeast side the "Twelfth" tract herein described.

Fourteenth. All that part that is situated in said county of Pike, estimated to be not more than 8,000 acres, of all that tract of land, containing 15,246 acres by survey, dated the 1st day of May, 1787, then lying in the county of Bourbon, State of Virginia, now in the counties of Pike and Floyd, State of Kentucky, on the waters of Big Sandy river, granted by the State of Virginia to William Robinson, Michael Robinson, Junior, John Robinson, Benjamin Robinson, Mary McGee, Betsy Robinson, Michael Robinson, Henry Robinson, James Robinson, John Robinson, William McGee and Thomas McGee, by letters patent dated the 21st day of January, 1792, recorded in the Land Office of Virginia, in Book 24 of Grants, page 485, and in the Land Office of Kentucky, in Book 14 of (Virginia) Grants, page 379, and therein described as follows: Beginning at three sugar trees lower corner of Benjamin Robinson and Company's survey of 14,280 acres, thence with the lower line of said survey South 45 degrees West 2,200 poles to their west corner, two white oaks, thence North 45 degrees West 1,108 8-10 poles to two sugar trees, thence North 45 degrees East 2,200 poles to a poplar, thence South 45 degrees East 1,108 8-10 poles to the beginning; with its appurtenances.

Said part of said tract of land adjoins on its southeast side the "Eleventh" tract herein described, and on its northwest side the county line between Pike and Floyd.

Fifteenth. All that part that is situated in said county of Pike, estimated to be not more than 1,000 acres, of all that tract of land containing 5,000 acres by survey dated the 5th day of May, 1787, then lying in the county of Bourbon, State of Virginia, now in the counties of Floyd and Pike, State of Kentucky, on the waters of Big Sandy river, and granted by the State of Kentucky to Preeson Bowdoin and Richard Young by letters patent dated the 8th day of March, 1793, recorded in the Land Office of Kentucky, in Book 3 of Grants, page 34, and therein described as follows: Beginning at two white oaks, it being the west corner of Benjamin Robinson's
106 and Company's survey of 14,280 acres and corner to Weaglesworth's and Young's survey of 16,000 acres, thence with said Weaglesworth's and Young's line South 45 degrees West 1,309 poles to a sugar tree, thence North 45 degrees West 615 3-10 poles to a poplar, thence North 45 degrees East 1,300 poles, crossing some small branches to two white oaks in the line of William Robinson and Company's survey of 15,246 acres, thence with the line of said survey, South 45 degrees East 615 3-10 poles to the beginning; with its appurtenances.

Said part of said tract of land adjoins on its southeast side the "Twelfth" tract herein described; on its southwest and northwest sides the county line between Pike and Floyd counties, and on its northeast side the "Fourteenth" tract herein described.

Sixteenth. All that part that is situated in said county of Pike, estimated to be not more than 3,250 acres of all that tract of land containing 23,250 acres by survey dated the 15th day of September, 1788, then lying in the county of Bourbon, State of Virginia, now in the counties of Floyd and Pike, State of Kentucky, on the waters of Big Sandy river, and granted by the State of Virgina to James Garrard by letters patent dated the 19th day of October, 1789, recorded in the Land Office of Virginia, in Book 21 of Grants, page 533, and in the Land Office of Kentucky, in Book 12 of (Virginia) Grants, page 339, and therein described as follows: Beginning at a poplar the north corner of William Robertson's, etc., survey of 15,246 acres, thence South 45 degrees West 2,260 poles to said Robertson, etc., west corner at two sugar trees, thence North 45 degrees West 1,480 poles to a poplar, ash and sugar tree, thence North 45 degrees East 2,020 poles to three buckeyes, six sugar trees and two walnut trees standing on the bank of Sandy immediately below the mouth of Bear creek, thence up Sandy binding thereon 1,250 poles on a reduced line to a buckeye and sugar tree, thence leaving Sandy and running South 3 degrees West 530 poles to the beginning; with its appurtenances.

Said part of said tract of land adjoins on its southeast
107 side the "Fourteenth" tract herein described; on its northwest side the county line between Pike and Floyd counties, and on its northeast side the Levisa fork of Big Sandy river.

Seventeenth. All that tract of land, containing 30,000 acres by survey dated the 19th day of March, 1788, then lying in the county of Bourbon, State of Virginia, now in the county of Pike, State of Kentucky, on the Levisa and Russell Forks of Big Sandy river, and

granted by the State of Virginia to Michael O'Mealy, assignee of William Whetcroft, by letters patent dated the 20th day of February, 1792, recorded in the Land Office of Virginia, in Book 24 of Grants, page 536, and in the Land Office of Kentucky in Book 14 of (Virginia) Grants, page 393, and therein described as follows: Beginning at the upper end of John Walker and Company's survey of 7,537 acres at two poplars and an ash on the West bank of said river and runs down the meanders of said river and binding on the same 1,770 poles to a poplar and ash the upper corner of Merry Walker's survey of 4,060 acres, thence North 45 degrees East 3,488 poles crossing the river and a large branch to an ash and sugar tree; thence South 45 degrees East 1,460 poles to two white oaks; thence South 45 degrees West, 3,287 poles crossing a large creek and the river to the begin ng, with its appurtenances.

Said tract of land adjoins on its southeast side the State line between Virginia and Kentucky, on its southwest side, the "First" and "Fourth" tracts herein described; and on its northwest side the "Eighteenth" tract herein described.

Eighteenth. All that tract of land, containing 30,000 acres by survey dated the 19th day of March, 1788, then lying in the county of Bourbon, State of Virginia, now in the county of Pike, State of Kentucky, on the Levisa and Russell Forks of Big Sandy river, and granted by the State of Virginia to Michael O'Mealy, assignee of William Whetcroft, by letters patent dated the 20th day of February, 1792, recorded in the Land Office of Virginia, in Book 24 of Grants, page 521, and in the Land Office of Kentucky in Book 14 of (Virginia) Grants, page 396, and therein described as follows: Be-
108 ginning at the lower en dof John Smith's 30,000 acre survey No. 1 at a poplar and ash corner to said survey and to a survey made in the name of Merry Walker of 4,060 acres and on the West bank of said river in the bottom, and runneth down the meanders of Sandy on the West side and binding on the same 2,956 poles to a walnut, sugar tree, hickory and lynn the lower corner of said. Walker's survey of 5,940 acres, and runneth thence north 45 degrees East 1,920 poles crossing said river to two sugar trees, thence south 45 degrees East 2,380 poles to a white oak, thence South 45 degrees West 2,116 poles crossing a large creek and the river to the beginning, with its appurtenances.

Said tract of land adjoins on its southeast side the "Seventeenth" tract herein described; on its southwest side, the "Second" and "Third" tracts herein described.

Nineteenth. All those parts that are situated Southwest of the top of the Ridge dividing the waters of Johns Creek from the waters of the Tug Fork of the Big Sandy river, of all that tract of land, containing 5,000 acres by survey dated the 20th day of March, 1788, then lying in the county of Bourbon, State of Virginia, now in the county of Pike, State of Kentucky, granted by the State of Virginia to Michael O'Mealy, assignee of William Whetcroft, by letters patent dated the 20th day of February, 1792, recorded in the Land Office of Virginia in Book 25 of Grants, page 530, and in the Land Office of Kentucky in Book 14 of (Virginia) Grants, page 584, and therein

described as follows: Beginning at two beech trees and maple, corner to John Smith's survey No. 7, thence South 65 degrees West 800 poles to beech trees and maple, thence North 30 degrees West 1,000 poles to a beech and black oak, corner to said Smith's survey No. 1, and with a line of the same North 60 degrees East 800 poles to a walnut and black oak, corner to said Smith's surveys Nos. 1 and 7, and with a line of the seventh South 30 degrees East 1,000 poles to the beginning, with its appurtenances.

Twentieth. All that part, estimated to be not more than 45,000 acres, that is situated in Pike county, State of Kentucky, west of the top of the ridge that divides the waters of Levisa fork from
109 the waters of Tug fork of Sandy river, of all that tract of land containing (exclusive of prior claims, 150,000 (one hundred and fifty thousand) acres by survey of Russell county (Virginia), Surveyor, dated the 17th day of December, 1795, now mainly in the county of Pike, State of Kentucky, and partly in the State of Virginia, on the waters of Big Sandy river, and granted by said Commonwealth of Virginia to John Henry and Alexander Smyth by letters patent dated the 20th day of August, 1796, and recorded in the Land Office of Virginia in Book 34 of Grants, page 505, and in the Land Office of Kentucky in Book of Special Virginia Grants, page 21, and therein described as follows, viz.: Beginning on the East bank of Great Sandy river at the junction of Russell and Louisa branches which form it at a sycamore tree marked at a corner, and running thence up the Louisa or Northeasterly branch on the East side binding thereon according to its several courses and meanders, 2,100 poles to a buckeye, a sugar tree and large poplar tree standing on the bank at the lower end of a bottom some distance below the mouth of the first branch that empties below Grape Vine on the same side, which trees were marked as a corner by Henry Smith in February, 1795, and running thence South 63 degrees East 4,210 poles to Pointers, thence North 2,960 poles to a stake in a line of Wm. Merritt's survey of 100,000 acres and with the lines thereof North 63 degrees West 2,000 poles to a white oak and North 45 degrees East 3,050 poles to an ash, a buckeye, a poplar and a cluster of sycamore trees standing on the bank of that branch of Sandy which separates Russell from Wythe and Kenawha counties about a computed mile above the mouth of a creek which empties on the South side called Blackberry which were marked by Henry Smith at the time aforesaid and since by French Mason as the lower corner to Merritt's said survey and one of the sycamores with the letters F. M., thence down the last mentioned branch of Sandy, binding thereon on the South side according to its several courses and meanders 8,076 poles to an elm and birch, marked as a corner standing on the South bank of the said branch 49 poles below the mouth of a creek that empties there into on the South side, called Comfort's
110 creek, which trees are also a corner to a survey made for Alex. Wolcott; thence with a line of last mentioned survey South 13 degrees West 7,480 poles to the beginning, with its appurtenances.

Except so much thereof as is included within the 17th and 18th tracts herein described.

Twenty-first. All that part that is situated in said county of Pike between the Levisa fork of Big Sandy river and the top of the ridge that divides the waters of said Levisa fork from the waters of the Tug fork of the Big Sandy river and north of the "Seventeenth" and "Eighteenth" tracts herein described; which said part is estimated to be not more than 30,000 acres, of that tract of 300,000 acres which was surveyed as in Russell county, Virginia, November 28, 1795, for Austin Nichols, and granted by the Commonwealth of Virginia to Benjamin Haskell by letters patent dated the 16th day of February, 1797.

Twenty-second. All that part that is situated in said county of Pike, estimated to be not more than 500 acres, of all that tract of land, containing 8,000 acres by survey dated the 25th of April, 1789, then lying in the county of Bourbon, State of Virginia, now in the counties of Letcher and Knott, State of Kentucky, granted by the State of Kentucky to George Lewis, assignee of Peter Grant, by letters patent dated the 16th day of October, 1795, recorded in the Land Office of Kentucky in Book 5 of Grants, page 213, and therein described as follows: Beginning at a white oak corner to Michael Ryan's survey of 10,000 acres in Merry Walker's line, thence North 45 degrees West 1,600 poles with said Ryan's line to his corner, two chestnut trees, thence South 45 degrees West 800 poles to a sugar tree corner to said Grant's 12,058¾ acres survey, thence with the line of said survey South 45 degrees East 1,600 poles to the beginning, corner of said Grant's 12,058¾ acre survey at two white oaks in Merry Walker's line, thence with his line North 45 degrees East 800 poles to the beginning; with its appurtenances.

III. Your petitioner claims said tracts of land respectively, under the grants stated respectively in the foregoing descriptions
111 of said tracts. The instruments through which title to each of said tracts devolved upon your petitioner are deeds from Charles B. Hillhouse, grantor to your petitioner, dated respectively the 21st and 24th days of December, 1906, and not yet recorded, conveying all the right, title and interest of Charles B. Hillhouse in and to each of said tracts of land respectively, the title of said Hillhouse having been derived by deeds and contracts to convey to him by others claiming by inheritance, devise or mesne conveyances from those to whom said tracts of land respectively were granted by the letters patent aforesaid.

IV. Said tracts of land have not been listed for taxation for any of the years 1901, 1902, 1903, 1904 or 1905 by your petitioner, nor, as your petitioner is informed and believes, by any of those under whom your petitioner claims, nor have the taxes for any of said years been paid by your petitioner, nor, as your petitioner is informed and believes, by any of those under whom your petitioner claims; but your petitioner is informed and believes, and therefore avers and alleges, that parts of each of said tracts have been listed for taxation for each of said years by occupants and others than those under whom your petitioner claims, and that taxes for each of said years on parts of each of said tracts have been paid by said occupants or others.

V. Your petitioner does not claim to be the owner of any improve-

ments on any of said tracts of land, nor of so much of the surface of said land as has been adversely held by others for a period sufficient to toll your petitioner's right of entry.

VI. Your petitioner is advised by counsel learned in the law, and believes that in all of said years and now, under the laws of the Commonwealth of Kentucky, whenever the occupant or occupants of any part or parts of any of said tracts have paid the taxes thereon which those under whom your petitioner claims ought to have paid or ought to pay the person so paying the tax shall be entitled to recover of the owner the amount of the tax so paid
112 and interest, which shall continue a lien on the property upon which such tax was paid.

VII. Your petitioner now files *his* petition under the provisions of Article III. of an act of the Legislature of the Commonwealth of Kentucky, entitled "An act relating to Revenue and Taxation," approved March 15, 1905, and applies to and asks this Honorable Court to ascertain the amount of unpaid taxes which your petitioner or those under whom your petitioner claims should have paid for any and all of said years 1901, 1902, 1903, 1904 and 1905, and to make the assessments required by said act of the Legislature.

And as in duty bound, so your petitioner will ever pray.

EASTERN KENTUCKY COAL LANDS CORP.,
By SAMUEL HOWLAND HOPPIN, *President.*

COUNTY OF NEW YORK,
State of New York, ss:

Samuel Howland Hoppin, being duly sworn, says that he is the president and chief officer of the Eastern Kentucky Coal Lands Corporation, the petitioner above named; and that the Board of Directors of said Corporation has authorized and directed that the foregoing petition of said corporation be duly verified under oath and filed; and deponent further says that the statements of the foregoing petition are true.

SAMUEL HOWLAND HOPPIN.

Subscribed and sworn to before me by Samuel Howland Hoppin this 24th day of December, 1906.

My commission expires the 30th day of March, 1907.

[SEAL.] WALKER M. JACKSON,
Notary Public, New York County.

COMMONWEALTH OF KENTUCKY,
County of Pike:

I, T. H. Harman, states that he is the attorney of the above-
113 named petitioner, the Eastern Kentucky Coal Lands Corporation incorporated; that its chief officer is absent from the county and the statements of the foregoing petition are true.

T. H. HARMAN, *Attorney.*

Subscribed and sworn to before me by T. H. Harman, Attorney, this 27th day of December, 1906.

My commission expires January 3, 1910.

W. W. GRAY,
Notary Public, Pike County, Ky.

COMMONWEALTH OF KENTUCKY:

Pike Circuit Court.

In the Matter of the Application of the EASTERN KENTUCKY COAL LANDS CORPORATION, INCORPORATED, to List for Assessment and Taxation and to Have Assessed for Taxes Which Ought to Have Been Assessed for the Years 1901, 1902, 1903, 1904, and 1905 Upon the Lands Described in Its Petition.

Schedule.

Now comes the petitioner and applicant, Eastern Kentucky Coal Lands Corporation, and requests and demands the clerk of the Pike Circuit Court to make complete copy of all pleadings, orders, judgments and other matter connected with the trial and file of papers in the above-styled matter and application and deliver same to this petitioner and applicant as a transcript to be used on appeal from the judgment therein rendered to the Court of Appeals for the State of Kentucky.

EASTERN KENTUCKY COAL LANDS CORP.,
By T. H. HARMAN, *Attorney.*

Filed May 13, 1907.

J. B. POLLEY, *Clerk.*
By A. D. CLINE, *D. C.*

114 COMMONWEALTH OF KENTUCKY:

Pike Circuit Court.

In the Matter of the Application of EASTERN KENTUCKY COAL LANDS CORPORATION, INCORPORATED, to List for Assessment and Taxation and to Have Assessed for Taxes Which Ought to Have Been Assessed for the Years 1901, 1902, 1903, 1904, and 1905 on the Tracts of Land Hereinbelow Described.

On Appeal from Judgment of the Pike County Court.

This proceeding coming on in regular call and the parties having announced ready, the same was submitted to the court upon the demurrer to, and the motion to dismiss, the petition and application, and arguments of counsel were heard upon same.

And the court as now advised upon consideration of the petition and application is of opinion that Article III. of an act of the

Legislature entitled "An Act Relating to Revenue and Taxation," approved March 15, 1906, and being Chapter 22 of the Acts of the Legislature of the Session of 1906, is a lawful exercise of the legislative power of this State; but the court sustains the demurrer to the petition and application for the reason that in the opinion of the court the said petition and application is insufficient in that it does not comply with the mandatory provision of said article, and for other good and sufficient reasons apparent on the face of the petition and application.

It is further ordered and adjudged that the motion to dismiss the petition and application be, and the same is now, sustained, and that the petition and application be, and the same is now, dismissed.

It is further adjudged that the Commonwealth recover of the petitioner, the Eastern Kentucky Coal Lands Corporation, its costs in this and the lower court expended.

After submission of this cause, upon the motion to dismiss and general demurrer, and pending hearing upon same, the applicant, by T. H. Harmon, its attorney, offers to list the 275,236 acres of land claimed by it in Pike county, and described in its petition for
115 assessment, for purposes of taxation at the rate of one dollar ($1.00) per acre, and to pay the taxes thereon assessed at said rate.

The court, upon consideration of said offer, overrules same.

Filed December 27, 1906.

W. B. TAYLOR, *Clerk*.
H. S. DAMRON, *D. C.*

STATE OF KENTUCKY,
County of Pike, set:

I, J. B. Polley, clerk of the Pike Circuit Court, do hereby certify that the above and foregoing is a true and complete copy of the record, as called for in the schedule in the matter of the application of Eastern Kentucky Coal Lands Corporation, incorporated, to list for assessment and taxation and to have assessed the taxes which ought to have been assessed for the years 1901, 1902, 1903, 1904 and 1905, as appears to me of record in my office.

Witness my hand this June 3, 1907.

J. B. POLLEY, *Clerk*.
By A. D. CLINE, *D. C.*

Fee for copy, $8.40.

Attest: J. B. POLLEY, *Clerk*.
By A. D. CLINE, *D. C.*

116 Be it remembered that at a Court of Appeals held at the Capitol at Frankfort on the 2nd day of October, 1907, the following order was entered, to-wit:

Pike.

EASTERN KY. COAL LANDS CORPORATION
v.
COM'LTH.

Floyd.

SAME
v.
SAME.

Came the appellees in the foregoing cases by counsel, and filed notice and moved the Court to dismiss the appeals herein, and further filed grounds and moved the Court to advance said case, and pass for oral argument, which motions are submitted, and by agreement of parties said cases are ordered heard together.

The notice, and grounds to dismiss and to advance mentioned in the foregong order are as follows:

117 Kentucky Court of Appeals.

No. 203.

EASTERN KENTUCKY COAL LANDS CORPORATION, Appellant,
vs.
COMMONWEALTH OF KENTUCKY, Appellee.

Notice.

Please take notice that on Wednesday, the 2nd day of October, 1907, at opening of the Court, or as soon thereafter as counsel can be heard, the motions, of which the annexed are copies, will be submitted to the Kentucky Court of Appeals for decision of the said Court thereon.

N. B. HAYS, *Att'y Gen'l.*
CHAS. H. MORRIS, *Assistant.*
T. H. PAYNTER,
DAVID BAIRD,
HAGER & STEWART,
Attorneys.

To Eastern Kentucky Coal Lands Corporation and William J. Hendrick, its Attorney.

118 STATE OF KENTUCKY,
County of Boyd, set:

On the 17th day of September, 1907, in the City of Huntington, County and State aforesaid, I delivered copy of within notice to William J. Hendrick, attorney for Eastern Kentucky Coal Lands

Corporation, Appellant within named, to which were attached copies of the three several motions bound herewith:

1. To advance the hearing of said cause.
2. To dismiss the appeal.
3. To affirm.

E. M. WATTS.

STATE OF KENTUCKY,
County of Boyd, To wit:

The affiant, E. M. Watts, says that his endorsement upon original of notice within named is true; that he is over sixteen — of age, and that he is not a party to, nor interested in, the action or appeal named in the caption of the said notice.

E. M. WATTS.

Taken, subscribed and sworn to by E. M. Watts, before me the 30th day of September, 1907; and I further certify that my
119 commission as Notary expires February 18, 1910.

ANNA MARY KELLEY,
Notary Public, Boyd County, Ky.

120 Kentucky Court of Appeals.

No. 203.

EASTERN KENTUCKY COAL LANDS CORPORATION, Appellant,
vs.
COMMONWEALTH OF KENTUCKY, Appellee.

Motion.

The Appellee, the Commonwealth of Kentucky, moves the Court to dismiss the appeal herein upon the ground that this Court has not jurisdiction to hear and determine matters appearing in said appeal.

N. B. HAYS, *Attorney Gen'l.*
CHAS. H. MORRIS, *Assistant.*
T. H. PAYNTER,
DAVID BAIRD,
HAGER & STEWART,
Attorneys for Appellee.

121 Kentucky Court of Appeals.

No. 203.

EASTERN KENTUCKY COAL LANDS CORPORATION, Appellant,
vs.
COMMONWEALTH OF KENTUCKY, Appellee.

Motion.

The Appellee moves the Court to advance the time of hearing matters arising upon appeal herein, because of the public nature and importance of the questions involved for decision.

N. B. HAYS, *Attorney Gen'l.*
CHAS. H. MORRIS, *Assistant.*
T. H. PAYNTER,
DAVID BAIRD,
HAGER & STEWART,
Attorneys.

122 Kentucky Court of Appeals.

No. 203.

EASTERN KENTUCKY COAL LANDS CORPORATION, Appellant,
vs.
COMMONWEALTH OF KENTUCKY, Appellee.

Motion.

The Appellee, the Commonwealth of Kentucky, moves the Court to affirm judgment of decree from which the appeal herein purports to have been taken, because, although the record may show, and the court find, that it has jurisdiction in the premises, yet it is manifest that said appeal is prosecuted for delay merely.

N. B. HAYS, *Att'y Gen.*
CHAS. H. MORRIS, *Assistant.*
T. H. PAYNTER,
DAVID BAIRD,
HAGER & STEWART,
Attorneys.

123 The grounds for an oral argument herein mentioned in the foregoing order are in words and figures as follows, to-wit:

124 Court of Appeals of Kentucky.

Nos. 203 and 297.

EASTERN KENTUCKY COAL LANDS CORPORATION, Appellant,
vs.
COMMONWEALTH OF KENTUCKY, Appellee.

Appeal from the Pike and Floyd Circuit Courts.

Statement of Counsel for Appellee on Motion for Oral Argument.

By prosecuting this appeal, the Appellant questions the constitutionality of Article III of an Act of the General Assembly of the Commonwealth of Kentucky, approved March 15, 1906, entitled "An Act Relating to Revenue and Taxation." Complaint is made that it not only violates the fundamental law of the State, but also contravenes the Constitution of the United States.

The Act of which Article III forms a part, was intended to codify and reduce into one all the previous laws bearing on the subject of Revenue and Taxation. It contained several provisions new to the revenue laws of Kentucky, among which was Article III. This Article seeks to reach, as a source of revenue, real estate that
125 had not theretofore been listed for taxation.

The Article is divided into ten sections, as follows:

Section 1. By Section 1 it is made the duty of each and every owner or claimant of land, to pay all taxes which had, and which should have, been assessed against him, and those with whom he is in privity, as the owner or claimant of said land, as of the 15th day of September, 1901, the 15th day of September, 1902, the 15th day of September, 1903, the 1st day of September, 1904 and the 1st day of September, 1905. And, by further provision of this Section, it is made the duty of such owner or claimant, if the land had not been listed as of said dates, or any of them, to have same assessed and listed for taxation "in the manner and within the time hereinafter provided", as of each of said dates for which the assessments may have been omitted, and to pay the taxes, interest and penalties therein provided. It is therein further provided that failure on the part of any such owner or claimant to have listed the land, or a failure to pay the taxes assessed and that should have been assessed thereon, as of any three of said dates, should *be cause* for the forfeiture and transfer of the title of such owner or claimant to the Common-
126 wealth, *in proceeding to be instituted therefor,* as further in the Aritcle provided.

This Section, however, further provided that such *cause for forfeiture should be extinguished,* if such owner or claimant, or those in privy with him, should, "within the time and in the manner in this Article provided" cause said land to be listed for taxation, and, on or before March 1, 1907, pay the taxes charged and that should have been charged, against him and those under whom he

claims, for said five years, or such of them as said owner, and those under whom he claims, are delinquent, together with the interest and penalties provided by law for the redemption of land sold for the non-payment of taxes.

Section 2. In Section 2, it is provided that the listing of property, delinquent under Section 1, should be by the County Court of the County wherein the land is situated, upon the application of such owner, by verified petition, filed in said Court on or before January 1, 1907, in which petition should be stated the years for which the delinquency existed, and also "in which the land sought to be charged should be described, so as to be identified." Provisions made for the hearing of the matters arising upon said petition, by the County Court, upon notice to the County Attorney,
127 who should represent the Commonwealth and receive, as compensation, ten per centum of the amount collected. It is made the duty of the County Court to pass upon matters involved, but from its decision either the petitioner, or the Commonwealth, feeling aggrieved, could prosecute an appeal to the Circuit Court, where it should be heard de novo. Provision is also made for the collection of the amount found to be due, and the payment thereof to the Commonwealth, through the Auditor, and the County, as other taxes.

By special provision of this Section, no appeal lies from the judgment of the Circuit Court.

Section 3. By Section 3, it is made the duty of the Commonwealth's Attorney, to institute proceedings in equity against those who are delinquents under Sections 1 and 2, to have adjudged forfeiture of their title and claim, and transfer of same to the Commonwealth of Kentucky. Proceedings in this action are regulated by Section 3, which, in addition to the Code requirements relative to process and service thereof, make it mandatory that a copy of the patent, title or claim under which it is sought to be forfeited, shall be filed with the petition, and a copy of the petition and ex-
128 hibits shall be posted at the front door of the Court House. Judgment to be in accordance with the pleadings, exhibits and evidence, and if cause for forfeiture is shown, judgment of forfeiture to be entered, which operates as a transfer of such title and claim to the Commonwealth, without execution of deed. If cause for forfeiture is not shown, the petition to be dismissed.

Such judgments to be conclusive, as against all defendants, irrespective of disabilities, and the proceedings are exempted from Sections 391, 410, 414 and 574 of the Civil Code. Section 391 provides that an infant may show cause against a judgment within twelve months after arriving at age; Section 410 requires the execution of bond before judgment against non-residents, but does not apply to the Commonwealth; Section 414 provides that a non-resident may, within five years, after rendition of judgment against him, petition for a new trial; and Section 574 requires that evidence should be taken upon interrogatories when *all* the defendants are non-residents or under certain disabilities, and *none* have appeared.

By further provision of Section 3, issues as to forfeiture shall be

triable by jury, and judgment rendered accordingly, as in ordinary actions.

129 Appeal to the Court of Appeals could be prosecuted by either party from judgments of the Circuit Court under this Section, to be prosecuted, however, within thirty days after the entry thereof.

Section 4. The title of the claimant having been forfeited under Section 3, provision was made by Section 4, whereby the original owner thereof could *purchase the same back* from the Commonwealth. But the Commonwealth, after forfeiture, being the owner, could fix its own price, and, by Section 4, fixed it at a sum "equal to the amount of the *unpaid* taxes charged, and, that ought to have been charged, against said defendant, and those under whom he claims, as the owner or claimant of said land for the fifty years" preceding the judgment of forfeiture, "together with interest thereupon at the rate of 15 per cent. per annum from the time of the said unpaid taxes for said several years were due, and the costs of the proceedings, including a reasonable attorney fee for the Commonwealth's Attorney, to be fixed by the Court.

Appeal to the Court of Appeals is provided for from judgment under this Section.

Amounts paid under this Section to the Sheriff are, by him,
130 to be paid to the State and County as taxes are paid, and in the same proportion.

Section 5. This Section prohibits a claimant who instituted a proceeding under Section 2, and who did not pay the amount found thereunder, to be due, from purchasing back the property under Section 4.

Section 6. By this Section, all title forfeited to the Commonwealth, and not purchased back by the former owner, as authorized by Section 4, is thereby transferred to and vested in the occupant, with actual possession, and who, or those under whom he claims, have paid the taxes thereupon for the five years in which such possession may have been held.

Section 7. If any of the forfeited property remains after the operation of Section 6, provision is made, by Section 7, for its sale, and distribution of the proceeds realized therefrom.

Section 8. By this Section limitation of five years is fixed for the commencement of proceedings for forfeiture under Section 3.

Section 9. Provides against evasions of Article III, not attempted, and, by reason of lapse of time, not now material.

Section 10. Provides forfeiture for future delinquencies,
131 not now relevant, and cannot become so until the expiration of five years. The only way in which it can now be considered material, is that it shows Article III covers past, and provides for future, delinquencies.

The foregoing is an analysis of Article III, with probably unnecessary detail. But it is thought best to give its general scope and effect, to better enable the court to see the application, or non-application of the objections raised thereto by the Appellant.

On the 27th day of December, 1906, the Appellant, Eastern Ken-

tucky Coal Lands Corporation, without any evidence whatever, of record, showing claim to, or ownership of, two hundred and seventy-five thousand, two hundred and thirty-five (275,235) acres of land in Pike County, or any part thereof, based upon grants issued by the State of Virginia, or the State of Kentucky, prior to the year 1800, upon surveys made prior to 1792, when the land was in the State of Virginia, and before the State of Kentucky was created, under which no possession was ever taken, nor taxes paid, seeking the benefits of Article III but denying its constitutionality, filed its petition in the Pike County Court, showing its delinquency for the five years named, and, pretending that its petition complied with the terms of said Article, sought to have assessments
132 made against it for said five years.

On the same day, December 27, 1906, a similar petition was filed by Appellant in the Floyd County Court, wherein eighty-eight thousand, four hundred and fifteen (88,415) acres of similar grants were involved. As in Pike County, no possession has ever been taken under these grants, or any of them, and no taxes paid thereupon, and appellant has no record evidence of title thereto, or interest therein. Both petitions, however, allege that appellant is "an" owner thereof.

It is these petitions that form the basis of the present litigation, now pending upon appeal before the Court. They were filed within the time prescribed by the Act, but an examination of them shows that they do not, nor were they intended to, comply with the other provisions of the Act, which, if done, would have imposed a liability upon the petitioners in the four counties, similar petitions having been filed in Knott and Letcher Counties, of at least one hundred thousand dollars, a liability which Appellant evidently did not desire to incur for speculative purposes merely, well knowing that they could not, in any event, recover any of the land.

Upon hearing before the County Courts of Pike and Floyd,
133 Appellant's petition was dismissed. It prosecuted an appeal to the respective Circuit Courts, and each of these Courts, specifically holding Article III to be a lawful exercise of the legislative power of the State, nevertheless sustained demurrers to the petition interposed by the Commonwealth, and dismissed the same, because, as found and so adjudged by the Court, it did not comply with the mandatory provisions of said Article.

Although by specific provision of Article III no appeal lies from this judgment of the Circuit Court, the Appellant, by filing in the Clerk's office of the Court of Appeals copies of the judgment of the Circuit Courts, sued out original appeal therein. It did not file a transcript of the records, but Appellee, learning immediately before the last day upon which the transcripts could be filed in order to have the cases docketed for the September term of this Court, that they had not been filed, itself procured and filed the transcripts from the Pike and Floyd Circuit Courts. It did not have time to procure transcripts from the Letcher and Knott Circuit Courts where similar judgments were entered; and the appeal therefrom sued out in this Court by Appellant cannot be heard before the January term,

1908; but all questions are identical in each and all of the four counties.

The matters arising upon this appeal, and to be deter-
134 mined by the Court, are:

1st. Has this Court jurisdiction of the appeal.

2nd. Is Article III of the Act entitled "An Act Relating to Revenue and Taxation", approved March 15, 1906, within the legislative power as limited by the Constitution of the State of Kentucky, and the Constitution of the United States.

3rd. If this Court has jurisdiction of the appeal, and Article III is a lawful exercise of legislative powers, did the Appellant bring itself within the terms of the Article by filing the petitions referred to, in the Pike and Floyd County Courts.

The law applicable to the above stated questions is fully discussed in brief filed herein by Appellee, and it is not deemed necessary to here restate it. But we refer to the brief and ask that it be read in connection with, and as part of, this statement.

All of which is respectfully submitted.

COMMONWEALTH OF KENTUCKY,
By N. B. HAYS, *Attorney General.*
CHAS. H. MORRIS,
Assistant Attorney General.
HAGER & STEWART,
T. H. PAYNTER.

W. H. WADSWORTH,
DAVID BAIRD,
Z. T. VINSON,
Of Counsel.

135 And afterwards at a Court of Appeals held at the Capitol at Frankfort on the 9th day of October, 1907, the following order was entered, to-wit:

Pike.

EASTERN KY. COAL LANDS CORPORATION
v.
COMMONWEALTH.

Floyd.

SAME
v.
SAME.

The Court being sufficiently advised, the foregoing cases are ordered advanced, and set for oral argument on November 19th and 20th.

It is further considered that the motion of appellee to dismiss said appeals be passed to the argument of said cases.

And afterwards at a Court of Appeals held at the Capitol at Frankfort on the 19th day of November, 1907, the following order was entered, to-wit:

Letcher.

EASTERN KY. COAL LANDS CORPORATION
v.
COMMONWEALTH.

Knott.

SAME
v.
SAME.

Came parties by counsel and by consent said cases are ordered docketed for the present term, and advanced, and ordered heard with cases of same style, from Pike and Floyd counties, now pending in this Court.

Pike.

EASTERN KY. COAL LANDS CORPORATION
v.
COMMONWEALTH.

Floyd.

SAME
v.
SAME.

Came the Attorney General, and filed the brief of the Commonwealth, and said cases coming on to be heard were argued by
136 E. W. Hines, Amicus Curiæ, and J. W. M. Stewart for the appellee, and further argument is continued until tomorrow morning at 11 o'clock.

And afterwards at a Court of Appeals held at the Capitol at Frankfort on the 20th day of November, 1907, the following order was entered to-wit:

Pike.

EASTERN KY. COAL LANDS CORPORATION
v.
COMMONWEALTH.

Floyd.

SAME
v.
SAME.

Letcher.

SAME
v.
SAME.

Knott.

SAME
v.
SAME.

These cases coming on again to be heard were further argued by E. W. Hines, Amicus Curiæ, J. H. Hazelrigg, and W. J. Hendrick for the appellant, and D. W. Baird and Z. T. Vinson for the appellee, and submitted.

And afterwards at a Court of Appeals held at the Capitol at Frankfort on the 20th day of December, 1907, the following judgment was entered, to-wit:

EASTERN KENTUCKY COAL LANDS CORPORATION, Appellant,
v.
COMMONWEALTH OF KENTUCKY, Appellee.

SAME
v.
SAME.

137 SAME, Appellant,
vs.
SAME, Appellee.

SAME, Appellant.
vs.
SAME, Appellee.

Appeals from Pike, Floyd, Knott, Letcher, Circuit Courts.

The Court being sufficiently advised, it seems to them there is no error in the judgments herein.

It is therefore considered that said judgments be affirmed, which is ordered certified to said courts.

It is further considered that the appellee recover of the appellant its costs herein expended.

And on said date the Court delivered the following opinion:

138 Court of Appeals of Kentucky.

Dec. 20", 1907.

To be Reported.

EASTERN KENTUCKY COAL LANDS CORPORATION, Appellant,
vs.
COMMONWEALTH OF KENTUCKY, Appellee.

Appeal from Pike Circuit Court.

SAME, Appellant,
vs.
SAME, Appellee.

Appeal from Floyd Circuit Court.

SAME, Appellant,
vs.
SAME, Appellee.

Appeal from Knott Circuit Court.

SAME, Appellant,
vs.
SAME, Appellee.

Appeal from Letcher Circuit Court.

Opinion of the Court by Chief Justice O'Rear.

139 These four appeals presenting a common question are heard together. They involve the constitutionality and construction of Article III. of the revenue law passed by the General Assembly of 1906.

For a full study and understanding of that Article it is set out complete, and is as follows:

"SECTION 1. It shall be the duty of every owner or claimant of land to pay all the taxes which have been assessed, and which should have been assessed, against him, and those under whom he claims, as the owner or claimant of said land as of the 15th day of September, 1901, the 15th day of September, 1902, the 15th day of September, 1903, the 1st day of September, 1904, and the 1st day of September, 1905; and if the said owner or claimant, or those under whom he claims, has failed to list said land, or any part thereof, for taxation, as of said dates, or any of them, it shall be his duty to have same

assessed and listed for taxation, in the manner and within the time hereinafter provided, as of each of said dates for which the assessment has been omitted, and to pay the taxes, interest and penalties thereon as herein provided.

"The fact that said land has been listed for taxation, or the taxes have been paid thereon by another claimant, shall not relieve against the duty herein imposed.

"If any such owner or claimant, or those under whom he claims, has failed to list such land for assessment and taxation, as of any three of said dates, or has failed to pay the taxes charged, or which should have been charged against him, or those under whom he claims, as the owner or claimant thereof upon said dates, for
140 any three of the years for which said assessments were or should have been made, said owner and claimant and those under whom he claims are hereby declared to be delinquent; and such failures, or either of them, shall be cause for the forfeiture and transfer to the Commonwealth of his said claim and title thereto, in a proceeding to be instituted for that purpose, as hereinafter provided. But said cause for forfeiture shall be extinguished if said owner or claimant, his heirs, representatives, or assigns, shall, within the time and in the manner in this article provided, cause said land to be assessed for taxation, and, on or before March 1, 1907, pay the taxes charged, and which should have been charged against him, or against those under whom he claims, as the owner or claimant thereof, for each and all of said five years, for which he or those under whom he claims are delinquent, together with the interest and penalties provided by law in case of the redemption of land sold for the non-payment of taxes."

"SECTION 2. The ascertainment of the amount of taxes unpaid and the assessments required by the preceding section shall be made by the county court of the county wherein the land lies, upon the application of said owner or claimant, by a petition verified by himself or his agents, filed in said court on or before January 1, 1907, in which the land sought to be charged shall be described, so as to be identified, and the years for which it was not listed and the years in which the taxes were not paid shall be stated, and in which also shall be stated the grant under which he claims, if he derives title from a grant, and the instrument through or the manner in which the title devolved upon him. Said application shall be set for hearing upon
141 a day to be fixed by the applicant, not less than ten nor more than twenty days after the filing of the petition, of which he shall give at least ten days' written notice to the county attorney, whose duty it shall be to attend said hearing and represent the State and county; for which service he shall receive as compensation ten per centum of the amount ultimately collected by sale or otherwise, by virtue of such delinquency.

"It shall be the duty of the county court to decide upon said application in a summary manner, upon such evidence as may be offered, having due regard to the value of adjacent property as of said dates, and to ascertain the amount of unpaid taxes which the applicant and those under whom he claims should have paid for any and all of said years, whether assessments were originally made as

of said dates or not. Upon finding the amount, the court shall also ascertain the proportion of such taxes due for county and State purposes at the rates fixed by law for such years; and shall cause a record of the findings to be made on the order book of the court, and certified to the Auditor of the State and county clerk. Should the court find that the land had been assessed against such owner or claimant, or those under whom he claims, as of any of said dates, it shall accept such assessments as a basis upon which to ascertain the amount of unpaid taxes for the year such assessment may have been made.

"Either the petitioner or the Commonwealth, feeling aggrieved by the finding of the county court, shall have the right to take an appeal, within thirty days after the entry of the finding of the county court, to the circuit court for said county, in the manner that other appeals are taken, except that no bond shall be required of the Commonwealth.

142 "It shall be the duty of the circuit court to hear and determine said application *de novo*, and to give it precedence over all other civil business in said court. The finding of the circuit court shall be conclusive and not subject to appeal. A copy of the findings shall be certified to the Auditor of the State and to the clerk of the county court.

"As soon as the time for appealing from the finding of the county court has expired, if no appeal is taken, or as soon as the final order of the circuit court is entered, if an appeal is taken, the obligation of said owner or claimant to pay the taxes therein called for, with interest and penalties, as provided by law for the redemption of land sold for the non-payment of taxes, shall be complete; and the same shall be paid to the sheriff of the county within thirty days thereafter. Provided, however, that if in a proceeding hereunder begun within the time allowed, the amount payable by the delinquent shall not be finally determined until within less than thirty days before March 1st, 1907, or until after said date, then the right of forfeiture as set out in section 1 of this article shall not be complete in the Commonwealth, unless and until said delinquent shall have failed to pay said amount, interest and penalties, for thirty days after the entry of said order.

"Upon collecting said taxes, interest and penalties, the sheriff shall, after paying the costs of the proceedings and retaining the commission allowed by law for himself pay over and account for the remainder to the Auditor of the State and to the county, in the same manner and subject to the same responsibilities of himself and his bondsmen as in the case of other taxes collected by him. Out

143 of the amount so paid, there shall be paid to the county attorney ten per centum thereof and an additional ten per centum to the Commonwealth's attorney, should an appeal have been prosecuted to the circuit court.

Section 3. "If any such owner or claimant shall fail to have said land assessed, or fail to pay the taxes charged, or which should have been charged against him, or those under whom he claims, as the owner or claimant of any such tract of land, as provided and within

the time prescribed in section- 1 and 2 of this article, together with the penalties and interest as provided by law, then it shall be the duty of the Commonwealth's attorney to institute in the circuit court of the county in which said land or any part thereof, lies, a proceeding in equity, in the name of the Commonwealth of Kentucky as plaintiff against said tract of land, and the owners or claimants of said land as defendants, naming them; if their names are unknown to him, designating them as the unknown owners and claimants thereof for the purpose of declaring the title or claim of said defendants forfeited to this Commonwealth and selling same. The suit so instituted shall be proceeded with to final judgment in all respects as other equity causes so far as applicable.

"In addition to the requirements of the Civil Code of Practice respecting process and service thereof, notice shall be given of the pendency of said action by posting a copy of the petition at the front door of the court house, which shall be done by the clerk immediately after the petition is filed, and he shall show by endorsement upon the original petition the time at which said copy was so posted. The defendants shall not be required to answer until after the expiration of thirty days from the posting of said copy.
144 And such copy, when so posted, shall be deemed notice to all defendants of the pendency of said action and its object.

"The petition of the plaintiff shall allege the facts constituting the cause of forfeiture under the provisions of this article, and there shall be filed with it a copy of the grant or instrument upon which the title or claim sought to be forfeited is based; and no other title, claim or possession, or continuity thereof, whether owned or claimed by the defendant or by others, shall be forfeited or in any manner be affected by said proceeding. The prayer shall be for a judgment of forfeiture and sale of the title or claim in the petition described.

"The court shall render judgment in accordance with the pleadings, exhibits and evidence adduced; and if it shall find that said title or claim sought to be forfeited is or has been subject to forfeiture under the provisions of this article, it shall render judgment declaring the same forfeited and the title thereto vested in the Commonwealth. Such judgment shall operate as a transfer to and vesting in, the Commonwealth of the said title and claim of each and all the defendants, and those under whom they claim, without execution of deed or other instrument. If the court shall find that the same is not subject to forfeiture under the provisions of this article, then it shall so adjudge and dismiss the petition of plaintiff.

"Judgments rendered by the circuit court under this article shall be conclusive as against all defendants, including infants, lunatics and married women, as to their title or claim derived through or under the grant, title or claim described in the petition; and said judgments and the proceedings upon which they are based
145 shall not be subjected to the provisions of sections 391, 410, 414 or 574 of the Civil Code of Practice. Issues as to whether or not the title and claim sought to be forfeited is or has been subject to forfeiture under the provisions of this article, shall be triable

by jury; and the judgment of the court shall be in accordance with the verdict, as in ordinary actions.

"Either party may prosecute an appeal from such judgment to the court of appeals within thirty days after the same may be entered; but if any such appeal be prosecuted, the transcript of the record shall be filed in the court of appeals within sixty days after the entry of said judgment; and the hearings upon appeal shall have the same precedence as other Commonwealth cases. No bond on appeal shall be required of the Commonwealth."

Section 4. "If, before or during the term of the circuit court next succeeding the term at which a judgment of forfeiture may have been entered, as authorized by section 3 of this article, any of the said defendants, in privity with the title so forfeited to, and vested in the Commonwealth, file his counter claim in said action, accompanied by a bond, with good and sufficient resident personal security, to be approved by the court, if in session, otherwise by the clerk of the court, conditioned to pay, and in all respects abide by and perform the judgment that the court may enter upon such counter claim, and in said counter claim offer to purchase back from the Commonwealth the title and claim in said action so forfeited to, and vested in, the Commonwealth, and praying to be allowed so to do, and exhibiting title thereto in himself, it shall be the duty of the court, upon proper pleadings as in other equity cases, and upon such evidence as may be adduced in the manner authorized
146 by law, to ascertain and adjudge the amount of unpaid taxes, charged and that ought to have been charged against the defendant and those under whom he claims, as the owner or claimant of said land, for fifty years immediately preceding the filing of such counter claim, and if the court finds and adjudges that said defendant is the owner of the title so forfeited to and vested in the Commonwealth, to enter a judgment against such defendant for a sum equal to the amount of the uppaid taxes charged, and that ought to have been charged, against said defendant, and those under whom he claims as the owner or claimant of said land, for said fifty years, together with interest thereupon at the rate of 15 per cent. per annum from the time of the said unpaid taxes for said several years were due, and the costs of the proceedings, including a reasonable attorney fee for the Commonwealth's attorney, to be fixed by the court. Provided, that no person except a defendant, and no defendant, except as herein provided, shall be allowed to purchase back from the Commonwealth the title so forfeited to, and vested in it, except such defendant as may, but for such forfeiture, establish in such proceeding a title thereto in himself upon which he could maintain an action of ejectment.

"If, thereupon, such defendant shall pay to the sheriff the amount of such judgment, it shall be the duty of the court to enter judgment retransferring to such defendant the title and claim so forfeited to, and vested in, the Commonwealth; and said judgment shall have the effect of retransferring and vesting same in said defendant without the execution of a deed or other instrument.

"Should such defendant not thereupon pay said judgment, the

court shall thereupon enter an order directing the sale of
147 the said title and claim as in section 7 of this article provided, and the amount realized upon said sale shall be used in the payment of costs and commissions hereunder; and the remainder, if any, shall be paid to the State and county as provided in this article, and the counter claim shall be dismissed. If the sale does not produce enough to pay the costs, an action may thereupon be maintained upon said bond for the costs, and reasonable attorney's fee for the Commonwealth and county attorney, to be fixed by the court.

"If at any time during the pendency of said action it shall be made to appear that the bond theretofore tendered and approved by the court or the clerk as insufficient, additional security shall be required, and the failure to execute same upon being so required shall have the same effect as if no bond had been given originally, and the counter claim shall be dismissed.

"Appeal may be prosecuted to the court of appeals from the judgment of the circuit court under this section within the time and in the manner and subject to all the conditions provided for appeals in section 3 of this article, except that the judgment of the circuit court as to the amount thereof shall be final and not subject to appeal.

"All amounts paid to the sheriff under this section shall be by him received and paid out to the persons entitled to the same as costs, and the remainder to the Auditor of the State and to the county in proportion to the amount due them for taxes and penalties for the said fifty years, in the same manner and subject to the same responsibilities of himself and his bondsmen as in the case of taxes collected by him. Provided, that fees required by law
148 to be paid to the Auditor shall be paid to him by the sheriff, and by the Auditor paid to the person entitled thereto. It shall be the duty of the county attorney to assist the Commonwealth's attorney in all proceedings under this article for which he shall be allowed the per centum as herein provided. Certified copies of the judgments of the circuit court, under sections 3 and 4 hereof, shall be recorded in the deed books of the county where the land, or any part thereof, lies, and indexed as deeds are required to be indexed."

Section 5. "Any owner or claimant who instituted a proceeding allowed by section 2 of this article, and who did not, within the time herein limited, pay the amount herein ascertained as charged or chargeable against him and those under whom he claims, as the owner or claimant of said land, shall not be allowed the right to purchase back, under the proceedings authorized by section 4 of this article, such title or claim so forfeited to, and vested in, the Commonwealth."

Section 6. "All title and claim proceeded against under this article and forfeited to, and vested in, the Commonwealth and not purchased back by the owner or claimant thereof, as authorized in section 4 hereof, whether such forfeiture be for the past delinquencies or for future delinquencies as authorized under section 10

hereof, shall be, and is hereby, transferred to, and vested in, any person for so much thereof as such person, or those under whom he claims, has had the actual adverse possession for five years next preceding the judgment of forfeiture, under claim, or color of title, derived from any source whatsoever, and who, or those under whom he claims, shall have paid taxes thereupon for five years in
149 which such possession may have been or may be held; and in those in privity with such person, his heirs, representatives or assigns, as to the mineral or other interests or rights in or appurtenant to such land."

Section 7. "All title and claim to land transferred to, and vested in, the Commonwealth under the provisions of this article and not purchased back by the owner or claimant as provided by section 4, and not vested in the occupant, as provided in section 6, shall be sold to the highest and best bidder for cash in hand. Said sale shall be made pursuant to a judgment of the circuit court in said action, and shall be at public auction at the front door of the court house on the first day of some regular term of the circuit court, after notice of sale shall have been advertised in the manner required by law in the case of sales of land under execution. The commissioner shall report the sale to the court for its confirmation, and, when confirmed, the court shall order the Commissioner to make a deed to the purchaser. Such deed shall operate to transfer to said purchaser such title and claim to the land so forfeited and transferred to, and vested in the Commonwealth as remains in it and after the operation of section 6 of this article, and shall so recite.

"The money realized from the sale shall be paid out and distributed as follows: First, to the payment of the costs of the suit, including commissioner's fee as fixed by law and a reasonable attorney's fee, to be fixed by the court and paid in the manner provided by law; second, to the county and State the proportion to
150 which each may be entitled, together with interest and penalty, as in this article provided: third, the remainder shall be paid over to the former owner or claimant or his personal representatives or assigns."

Section 8. "No action to enforce a forfeiture as authorized and provided in this article shall be instituted after the expiration of five years from the accrual of the right thereto."

Section 9. "No owner or claimant of any land in this Commonwealth shall be allowed to prevent the operation of this article by the payment, after January 1st, 1906, of any amount less than the whole of the unpaid taxes, interest and penalties provided by law, that were charged, and that should have been charged against said owner or claimant of said land and those under whom he claims, as of each and all of said five dates, first mentioned in section 1 hereof; and where such payment is made after the passage of this act, the amount to be paid shall be ascertained, and payment made, as in this article provided."

Section 10. "When, for any successive five years after the first day of August, 1906, any owner or claimant of or to any land in this Commonwealth shall fail to list same for taxation and cause himself

to be charged with the taxes properly chargeable thereon, or fail to pay the same as provided by law, then such failure shall be cause for the forfeiture of his title and claim thereto, and the transfer of the same to, and vesting it in, the Commonwealth of Kentucky. And wherever such failure exists, it shall be the duty of the Commonwealth's attorney to institute an equitable action in the circuit court of the county wherein the said land, or a part thereof, lies, for the purpose of declaring said forfeiture and vesting said title
151 and claim thereto in the Commonwealth of Kentucky, and for the sale of such parts thereof as, under the provisions of this article, are liable to sale. Such actions and proceedings pertaining thereto shall conform to the provisions of this article as far as the same may be applicable."

It is also proper, and perhaps necessary, to set out here so much history of the State as will disclose the evil sought to be remedied by this act, in order that the legislative purpose may be more surely divined.

While prior to 1779 a considerable quantity of the wild lands of Virginia west of the Alleghany mountains had been appropriated by patents under the stimulus of enterprising adventurers and the policy of the Colony to encourage emigration and the settlement of the vast wilderness territory then inhabited almost exclusively by savages, it was after the war of the revolution, when the returning soldiers from the Continental army were to be compensated in a measure by such favor as the state could bestow, that the real tide of emigration to the west set in. In 1779 Virginia established a land office, and created the office of Register of the Land Office. Most liberal inducements were offered settlers of "waste and unappropriated lands." There was no limit to the quantity any person might appropriate. Surveyors were appointed for the Western territory upon the nomination of the President and Professors of William and Mary College. They were required to make records of entries and surveys under them. Their peripatetic officers were widely scattered.
152 The territory opened up for settlement under this act was that part of Virginia south of the Ohio river, east of Green river, west of the Cumberland mountains and north of the Carolina line, excepting certain Indian reservations. In other words, it comprised all of the eastern and most of the central part of what is now the State of Kentucky. The surveyors so appointed could appoint any number of deputies, and did appoint a great many. Aside from the lack of roads and the difficulties of travel in a region of unbroken forests with great rivers and mountains to be traversed, the dangers from bands of roving savages and wild beasts that infested that vast region, made intercommunication between these officers both difficult and dangerous. (2 Collins' Hist. Ky. 552, 563.) There was a constantly growing tide of immigration into the newly opened territory. Many of the immigrants, probably most of them, were intending settlers. But, as might have been expected, speculators and adventurers not a few were attracted thither by the glowing accounts which were carried back to the older settlements in the east. Large tracts, some of them for many hundred thousand acres,

were entered, located, and surveyed, while many thousand smaller tracts, designed for immediate or present actual settlement, were taken up at the same time. So rapid was the growth of population that in 1790 the white population of that territory which later became the State of Kentucky, was 61,000 (1 Marshall Hist. Ky. 441.) These people, so far removed from their seat of government, and so imperfectly protected as was inevitable under the existing con-
153 ditions, were clamorous for a separate and independent state government. On the 18th day of December, 1789, Virginia indicated by an act of her Assembly the terms on which she would consent to part with her sovereignty over the new territory. This was agreed to, and is what is known as the Virginia Compact. It was even then foreseen that conflicts would arise concerning the grants of land already made, or the initial steps of which had been begun. Perhaps the delay experienced by the Kentucky pioneers in obtaining the consent of the mother State for a separation, was due to the influence of those who had taken up large boundaries of land in Kentucky for speculative purposes. At any rate, the Compact abounds with evidence of the fact that controversies among claimants and settlers concerning the validity and location of these entries had already arisen in considerable numbers, and were then also foreseen as future problems. The Compact, in so far as material in this investigation reads:

"§ 7. Third, that all private rights and interests of lands within the said district, derived from the laws of Virginia prior to such separation, shall remain valid and secure under the laws of the proposed State, and shall be determined by the laws now existing in this State.

"§ 9. Fifth, that no grant of land or land warrant to be issued by the proposed State, shall interfere with any warrant heretofore issued from the land office of Virginia, which shall be located on land within the said district, now liable thereto, on or before the first day of September, one thousand seven hundred and ninety-one.

154 "§ 10. Sixth, that the unlocated lands within the said district, which stands appropriated to individuals, or description of individuals, by the laws of this Commonwealth, for military or other services, shall be exempted from the disposition of the proposed State, and shall remain subject to be disposed of by the Commonwealth of Virginia, according to such appropriation, until the first day of May, one thousand seven hundred and ninety-two, and no longer; thereafter the residue of all lands remaining within the limits of the said district, shall be subject to the disposition of the proposed State.

"§ 14. And be it further enacted, that if the said convention shall approve of the erection of the said district into an independent State on the foregoing terms and conditions, they shall and may proceed to fix a day posterior to the first day of November, one thousand seven hundred and ninety-one, on which the authority of this Commonwealth, and of its laws, under the exceptions aforesaid, shall cease and determine forever over the proposed State, and the said

articles become a solemn compact mutually binding on the parties, and unalterable by either without the consent of the other."

At a convention called for the purpose of considering the proposal, the Compact was accepted by the District of Kentucky, as the new territory was then called, on July 20th, 1790.

155 An act of Congress, February 4, 1791, provided for admitting the new State into the Union, which was consum-ated in June 1792.

The early records of this Court, and of its predecessor, the Supreme Court of the District of Kentucky, (Hughes' Reports) abound in evidence of the confusion into which the land titles of the young Commonwealth had fallen, even before it was launched as a State. It is easy to gather from these records that not the least of the difficulties with which the new State had to deal was the tangled condition of one of the most important features of its society, namely, the status and validity of the titles to its lands. The handicap was serious, and has been persistent. The system was loose and uncertain, admitting not only of honest mistakes, but of easy opportunities for frauds and oppression. It was peculiarly adapted to the purposes of mere speculation. The system of entering and surveying unappropriated lands was, unhappily, though not unnaturally, brought over into the new State and continued.

Indeed, in the first Constitution adopted April 16, 1792, it was provided, Sec. 6 of Art. 8,

"All laws now in force in the State of Virginia, not consistent with this Constitution, which are of a general nature, and not local to the Eastern part of that State, shall be in force in this State until they shall be altered or repealed by the legislature."

And the book of the Statute laws of Kentucky for years thereafter was Mr. Littell's Statutes, compiled from the Virginia Statutes, and the first legislative enactments of the new State.

156 Provision was at once made for transferring from the records of Virginia the evidence of grants and conveyances of lands in the old District of Kentucky. They were required to be deposited as part of the records of the office of the clerk of this Court at the seat of the State government, removed a week's travel at that time from the State's eastern domain. Under the existing system, and for the supposed convenience of proposed settlers, the records of new entries and surveys were kept by the county surveyors, although it does not appear that they were required to maintain public or permanent offices at the various county seats.

Many, maybe most, of the pioneer settlers of this State, were unlearned "backwoodsmen." Perhaps many of the local surveyors were but little advanced in education. Vacant lands were supposed to be plentiful. Consequently land was then the cheapest of commodities, if it might be so called. Many a noble estate, as it is now, passed then in exchange for a rifle gun or a powder flask. As new counties came to be formed, as they were rapidly enough, new county seats, with new offices and new records (without provision for transcribing the old in so far as they affected the new counties) were created, and were doubtless most generally supposed to contain

all necessary data for the guidance of the settlers in taking up and conveying land. It resulted that new patents were issued for lands already appropriated by previous grants. In many instances several patents overlapped the same land. This went on with little change for nearly a hundred years. The recent and present
157 occupants were innocent enough of knowledge or purpose, it may be safely assumed, to do ought than follow the course of the law, buying from the State in confidence, and selling among themselves with assurance that which they had bought, paid for, and at great sacrifice of labor, means and care, erected into permanent homes. It now developes, and has been known for some time, that all or most of the vast territory lying to the northwest of the Cumberland mountains, and west of the Tug Fork of Big Sandy River, to a point west of the main Kentucky river, was appropriated under entries and surveys made by virtue of the laws of Virginia before the separation in 1792. Few of those entries were ever settled upon. So far as the new settlers knew in fact, in every probability, the lands were unappropriated. The generations of a century have thus increased, and by actual occupancy, by personal industry and thrift, and by all the means by which Americans create a Commonwealth, they have fastened themselves to the soil in the belief that they have inherited it from their fathers, or purchased it honestly from their neighbors, and that it is theirs. Notwithstanding that millions of acres have thus been reduced to that kind of actual possession and for such a period as to ripen into a perfect title in spite of its original state, and that the population of this territory is now more than 300,000, there are many hundred thousand acres of these lands unfenced, whose stores of mineral and mantels of forest have remained in their natural state until the present hour. Commercial necessity and enterprize in recent years are opening this region to the markets, and what was once of small value, has become enormously important and valuable.
158 The holders of these old grants during all these years have taken no part in the development of the section where these lands lie, nor done ought to add to the State's strength and stability in peace or in war. They have contributed nothing in clearing the lands for settlement. They have not tenanted them. They have not worked them. Every consideration of the government (save the pittance paid into the treasury for the warrants) which entered into the grant by the State, has been withheld or disappointed by the grantees and those claiming them. The State was then and is yet concerned in the subject of actual settlement, of homesteaders tied by interest and patriotism to the State's welfare. It was from the first and is yet a proper subject of public concern that these lands be seated by settlers, to the end at least, if no greater, that the State might derive taxes from them for its support.

While the people in that section may have been unmindful of the underlying insecurity of their titles, the subject has been one of constant concern to the State. The situation was one of practical difficulties. On the one side was the legal right of the original patentees. On the other was the moral right of those who had, in ignorance of

the truth, bought and settled upon some parts of these same lands. Beside it all, was the Compact with Virginia, an international agreement in its nature, the legal effect of which, from environment and circumstances, was little understood in the State. There was the purpose to live up to the spirit of the Compact in good faith, and fear of its letter. Let us now follow in a brief review the course of legislative and judicial cognizance of the situation.

159 On June 26th, 1792, the General Assembly of this State (1st Littell's Laws of Ky. 63) enacted a statute, by the 14th section of which it was provided that all lands of which a list shall not be given in by the owner or proprietor to the Commissioner on or before Feby. 4th, 1795, and on which the taxes with interest should not be paid, should be considered as, and actually be, forfeited to the State, and should be disposed of in such manner as should be directed by law. In 1801, the legislature extending the time to save forfeiture, re-enacted the forfeiture-clause, (2nd Morehead & Brown, 1072.) This Court, construing that statute in 1822, held that the act did not, properly construed, dispense with an inquisition of office found, and that forfeiture was not worked by the mere operation of the statute. (Barbour v. Nelson, 1st Litt. 60.)

In 1812 the act known as the "occupying claimants' law" was adopted, which in 1823 was held unconstitutional by the Supreme Court of the United States in Green v. Biddle, 8 Wheat. 1, though by a divided Court.

In 1824 the act known as "The seating and improvement bill," was adopted, requiring the fencing of a certain portion of each tract of 1000 acres or more, under penalty of forfeiture. (2nd Morehead & Brown, 1074.) This act was held unconstitutional in Gaines v. Buford, 1 Dana 481, the Chief Justice not sitting, and the two remaining Judges writing divergent opinions as to the reasons upon which the court's action was based. These opinions, and that of the Supreme Court in Green v. Biddle, as well as certain resolutions of the General Assembly of Kentucky, adopt-

160 ed January 11th, 1825 (vide Acts 1824, pp. 275-278) all indicate an unsettled state of judicial and legislative opinion as to the precise effect of the Compact as limiting the power of Kentucky in passing laws upon these subjects.

On January 12th, 1825, the forfeiture laws, on account of non-listing of lands for taxation, were re-enacted with the additional provision (doubtless moved by the Court's language in Barbour v. Nelson, *supra*,) that the forfeiture title should be transferred to the Commonwealth without office found.

In February 1828 (2nd Morehead & Brown, 1081,) it was enacted that all title forfeiture to the Commonwealth for failure to list property for taxation, should inure to the benefit of the occupant in possession.

These latter acts were carried forward into the general revision of 1860 (Ch. 58-59, 2nd Rev. Stats., pp. 103-106), and by the act of 1860, (2nd Rev. Stats., 757) it was enacted that land forfeited prior to 1834 should remain unredeemable. It was evidently

thought by the legislature that the provisions of the act of 1825 were valid, as they had not been questioned judicially up to that time.

In the revision of 1873 (sec. 1, art. 17, ch. 92 Ky. Statutes) the same provision was made for the forfeiture of lands not listed and tax paid.

In 1876 a case came before this Court in which was involved the constitutionality of the provisions above cited relating to forfeitures without office found. (Marshall v. McDaniel, 12 Bush, 378.) It was there held by this Court that such attempt to forfeit was
161 unconstitutional; that the land owner must first have his day in Court.

Thus the matter stood when the convention of 1890 met to revise the Constitution. This subject was deemed of enough importance to justify the creation of a special committee on "Land Titles." Various proposals were made to the Convention, among others, one by the member from Wolfe, Powell, Menifee and Montgomery, embodying substantially the same provision as is contained in the act which is the subject of this opinion. The result of the deliberations of the Convention was Sec. 251 of the present Constitution. The debates show that the delegates were alive to the very evil which is herein set forth, and which we will see was presented to the legislature in 1906 for its consideration. Sec. 251 of the Constitution as finally adopted, reads:

"No action shall be maintained for possession of any lands lying within this State, where it is necessary for the claimant to rely for his recovery on any grant or patent issued by the Commonwealth of Virginia, or by the Commonwealth of Kentucky prior to the year one thousand eight hundred and twenty, against any person claiming such lands by possession to a well defined boundary, under a title of record, unless such action shall be instituted within five years after this Constitution shall go into effect, or within five years after the occupant may take possession; but nothing herein shall be construed to affect any right, title or interest in lands acquired by virtue of adverse possession under the laws of this Commonwealth."

162 Doubtless the moving cause of the adoption of this provision, one of limitation, instead of the one proposed by the delegate from Wolfe, Menifee, Powell and Montgomery, was that the Supreme Court of the United States had held that this State could legally enact a shorter limitation than existed under the laws of Virginia in 1790. (Hawkins v. Barney, 5 Pet. 457,—this Court holding the same way in Beard v. Smith, 6 T. B. Mon. 430), whereas, neither court had up to that time passed upon validity of a statute such as is now being considered.

The first legislature after the new Constitution of 1891 also attempted to help out the situation along the same line. It enacted § 2377 Ky. Statutes, providing that no one should maintain an action in ejectment upon a patent issued prior to 1820 who had not paid twenty years' taxes on his title.

But this Court in 1901, in Shaw v. Robinson, 111 Ky. 715; 23 Ky. L. R. 998; 64 S. W. 620, construed the language "title of rec-

ord," of § 251 Constitution, to mean a title from the Commonwealth upon a valid patent, and denounced § 2377, Ky. Statutes, *supra*, as unconstitutional upon the ground stated in Marshall v. McDaniel.

Thus we see that from the beginning this State has been endeavoring to rid itself of the incubus caused by the dormant titles and inactive owners or claimants who refused, or at least persistently failed, to do anything toward supporting the State government, or allowing the property which they claimed, to do so. We also see that notwithstanding the public insistence and the important question of governmental policy involved, this Court has from the start
163 adhered to the strictest construction of the terms of the Compact and of the constitutional rights of the delinquents, so as to afford them every chance to come forward and save whatever title or claim they had. And yet they did nothing.

It will be remembered that in Virginia there was substantially the same state of affairs as in parts of Kentucky, for that region lying between the Allegheny mountains and the borders of Kentucky was of the same character of land, and had been appropriated by the same methods and under the same system, and at or about the same time, as had the lands in Kentucky. Naturally, the same result ensued.

In 1790 the Commonwealth of Virginia enacted a statute (13 Henning's Stats. at Large, p. 116, §5) by which title to lands not tax-paid for three years were "forfeited and vested in the Commonwealth." The act was extended and re-enacted in increasing vigor in 1792, 1803, and 1810. In 1835 a still more drastic act was adopted (Hutchinson on Land Titles of Virginia and West Virginia, p. 62), the salient features of which are incorporated in the act of Kentucky now being investigated, except that in the Virginia Act there is no provision for an inquisition of office, or its equivalent, as there is in the Kentucky statute. This act has been before the Supreme Court of Appeals of Virginia a number of times, and has always been upheld as constitutional. (Wilds v. Serpell, 10 Gratt., 408; Stats. v. Board, 10 Gratt., 400; Smith v. Chapman, 10 Gratt., 445, and Hale v. Branscum, 10 Gratt., 418).

West Virginia was erected into a State in 1863. All of her territory was carved out of old Virginia, and was wholly within
164 the zone affected by the system of grants above discussed. In her Constitution is a provision in every feature or principle the same as the Kentucky Statute of 1906, except that in the West Virginia Constitution there is not a provision for a trial in court concerning the proposed forfeiture. (Article XIII §§ 1-6 West Va. Constitution.)

The Supreme Court of West Virginia has also upheld the forfeiture provisions as not depriving the land owner of his property without due process of law, and as being not only just, but wise and politic legislation. (McClure v. Maitland, 24 W. Va. 561; McClure v. Mauperture, 29 W. Va. 633; Twiggs v. Schovallie, 4 W. Va. 463; Smith v. Tharp, 17 W. Va., 221; Hays v. Camden, 38 W. Va. 109; Wyant v. Hays, 38 W. Va. 681; State v. Sponaugle, 45 W. Va. 420.)

The question arose in a case which was before the Supreme Court of the United States in 1898, (King v. Mullins, 171 U. S. 404) whether the West Virginia provision was repugnant to the Federal Constitution as depriving one of his property without due process of law. The court recognized that the term "due process of law" as used in the Federal Constitution, must mean the same thing throughout the Union. It also held that the term might be satisfied with a different provision for a hearing as concerned tax matters, from what would be required in a controversy between individuals. The court refused to say that the provisions of the West Virginia Constitution, and of the statutes of Virginia, forfeiting the title to land without office found for the non-listing and non-payment of taxes by their claimants, was repugnant to the "due process of law" guaranty of the Federal Constitution. But the court did say, as being all that was necessary to a decision of the case in hand, that in as
165 much as there was a provision in the statute of West Virginia by which the lands forfeited under the constitution of that State were sold under a decree of a court, in an action to which the former owner was made a party, and in which he was allowed to redeem on certain contingencies, it was in every sense a sufficient compliance with the requirement that the owner be given a day in which to contest the proposed forfeiture. The West Virginia provision was therefore upheld.

Thus we see that in 1906 the legislature was confronted with this situation: Every evil that had existed from the beginning threatening the stability of the land titles of a large and important section of the State, was still unalleviated; that every legislative measure adopted during the past 115 years had been unavailing; that in spite of their public duty, and of the imperative command of the law and needs of the State, these claimants refused to respond, and were beyond the reach of the law then in existence; that the reason of the failure of the previous legislation upon the subject, were those constitutional obstacles which had been pointed out in various opinions of this Court and of the Supreme Court of the United States; that similar conditions produced by the same cause had existed in two of our sister States; that they had gone further than Kentucky had in an attempt to relieve the situation, and that their efforts had been successful, and were without legal exception. The idea was not new to the legislature that the duty of the Commonwealth was to protect herself from a continuation of that thrall that was paralysing the energies of a large section of the State, disturbing its peace,
166 and robbing the State treasury of its revenues. Thereupon article 3, of the Act of 1906, was most deliberately adopted. The revenue laws of Kentucky, in the opinion of the previous legislature, needed radical revision. A commission was raised to study the question, to hear complaints and suggestions, and to bring in at the next session a new bill covering the entire subject. Two years were allowed for the work. The committee did as directed. The whole system of the State's revenue laws was revised, and an entirely new, complete measure introduced and enacted. (Acts 1906, pp. 88 to 248.) Article 3, as quoted above, was in this deliberate manner pro-

posed and adopted. There can be no doubt that the legislature determined to out-law these dormant titles, and thereby protect the treasury and increase the State's revenues. Nor can there be doubt that the legislative purpose was to proceed carefully and in that manner that would satisfy the requirements of the Constitutions of ths State and of the United States. The legislature did not intend to deal tenderly with a situation that had become aggravating in its merits; it realized that sometimes sternness is justice, and further leniency injustice. The legislature has squarely faced the problems of the situation. The Court has no disposition to look at it otherwise than it is,—to pass upon the questions of law presented, grim and bare as they may be.

Proceeding under article 3, of the Act of 1906, appellant, claiming to be an owner of certain patents issued upon Virginia warrants prior to 1789, petitioned the county courts of Pike, Floyd, Knott and Letcher, to list for taxation against it 275,235 acres of land in Pike county, 88,215 acres in Floyd, 55,020 acres in Letcher, and
167 29,058 acres in Knott, aggregating 447,528 acres. The county courts refused to list the lands upon the ground that the petitions were not sufficient under the statute. This feature will be noticed particularly further along. On appeal to the circuit courts of those counties, the same conclusion was reached, and the appellant's applications were refused, whereupon these appeals are prosecuted to this court.

The first question presented is has the Court jurisdiction of the appeals?

The appellate jurisdiction of this Court is regulated by statute. Only such matters as the legislature may see fit to allow to be brought here on appeal, are cognizable by the Court. No person has an inherent right of appeal, however natural the notion that appellate courts should be open always, as are all other courts, to a litigant who conceives that his rights have been denied. But jurisdiction, and final jurisdiction must be lodged somewhere. It has been left to the legislature to do that. It is exceptional indeed when appeals are allowed in the matter of tax assessments. The reasons are obvious. But they are sometimes allowed by legislation.

The language of the Statute in question must be looked to, to see whether an appeal to this Court is denied, in spite of the provision of the General Statute fixing this Court's appellate jurisdiction.

A clause of a section of this article provides that the county court "upon finding the amount"

"shall cause a record of the findings to be made on the order
168 book of the Court and certified to the Auditor. Should the Court find that the land has been assessed * * * as of any of said dates * * * it shall accept the assessment as a basis upon which to ascertain the amount" etc. "The finding of the circuit court shall be conclusive and not subject to appeal. A copy of the findings shall be certified to the Auditor of the State, and to the clerk of the county court." (§ 2, Art. 3, p. 118, Acts 1906.)

Under section 4241, Kentucky Statutes, relating to proceedings by Auditor's agents to have omitted property assessed, a similar pro-

vision occurs, though not in the same language. There the finding of the lower tribunals as to the value of the property assessed is not subject to appeal, but an appeal is allowed upon the question of the liability of the property to assessment.

Appeals are allowed to this Court from final judgments in all cases in circuit courts where the title to land is involved, or where the amount in controversy exclusive of interest and costs, is not less than $200. "In all other civil cases, the Court of Appeals shall have appellate jurisdiction over the final orders and judgments of all courts." (§950 Ky. Statutes.) We construe the word "finding" in the act before us as relating to the fixing of the value of the property assessed. To that extent only is the appellate jurisdiction of this Court as fixed by section 950 Ky. Statutes, supra, curtailed. We are of opinion that this Court has jurisdiction of the appeals.

The constitutionality of the act is questioned by appellant.
169 The question must be decided, as if it is unconstitutional, appellant would have had the right to list its lands under other provisions of law relating to the assessment of omitted property. If it is constitutional, then unless appellant has complied with its terms, the action of the lower court was right.

We will take up the different grounds upon which the act is assailed.

First. It is said to be void, "because it takes from the assessor, a constitutional officer, the power conferred upon him alone by the Constitution and the laws pursuant thereto to assess all real estate."

Section 227 of the Constitution creates the office of assessor, but does not define his duties.

§172 of the Constitution requires all property not exempt from taxation to be assessed at its fair cash value, and provides for punishing "any officer or other person authorized to assess values for taxation," who shall wilfully commit any error in the performance of his duties. This seems to imply that the legislature may provide other persons to assess property. It has always been done that way under the present and preceding Constitutions. Railroads, and other public service corporations, distillers, and dealers in rectified spirits, are, and for a long time bank and trust companies were, assessed by "other persons" than the county assessors. The latter cannot assess for any period than the current year. All omitted assessments are done by the county court, and have been for many years, certainly ever since the adoption of the present Constitution.

This question was raised in Commonwealth v. Taylor, 101
170 Ky. 325; 19 Ky. L. R. 552, and there decided adversely to this appellant's contention.

Second. It is claimed that the act is local and special and thereby violates §59 of the Constitution. The only point urged in brief of counsel under this head is that "the act could not apply at the very outside to more than twenty or twenty-five counties in Kentucky." But that does not constitute the legislation either local or special. A statute regulating the care and use of natural gas wells might not apply in fact to more than a dozen counties in the State. Nevertheless the terms of the statute are general, and are applicable to every

portion of the State where the conditions may exist, or may arise in the future. The classification of the subject, lands which have been omitted from assessment for a great many years, is a legitimate exercise of legislative discretion. It finds many counter parts in the statute respecting other classes of property, such, for example, as special provisions regarding the listing of non-residents' lands; the assessment of dealers in tobacco and liquors. The act is as general as the nature of its subject will admit. That it may not apply to every county, would be because the general condition treated of did not happen to exist in that county. Nevertheless, the act is not thereby made local. Nor is its subject special legislation in any legal sense.

Third. It is claimed that the act violates § 171 of the Constitution, which requires that taxes shall be levied for public purposes only. The grounds of this objection are, (1) that the provision for investing the occupying claimant with the forfeited title, shows that he is the intended recipient of the tax; and (2) that the pro-
171 visions for the sale of the other forfeited lands, and the payment of some part of the proceeds to the officers who represent the State in the prosecutions, is also a provision for their private purposes. Counsel confuse the tax levied upon the lands, and the disposition of the lands by the State after they shall have become forfeited. There is no pretense, and there can be no ground for any, that the act provides any other use of the taxes that may be derived from assessments under the act than is made of all other taxes imposed on all other property of the State and its counties. But if the assessments are not made because of the contumacy of the property holder or claimant, and thereby a forfeiture of his title results, then it is not material to him what becomes of the title which has been vested in the State. There is nothing in the Constitution which prohibits the State's conferring the title upon whom it pleases, and of disposing of it in any manner its legislature may elect to do. The forfeiture is not a tax. Nor is it the equivalent. It is a penalty imposed for a violation of a statute. Like other penalties, it is the subject of legislative control and disposal without regard to the previous title or ownership of the convicted violator of the law.

Fourth. It is contended that the act violates section 51 of the Constitution, which requires that every legislative act shall relate to but one subject, which shall be expressed in its title.

The title to the act is "An Act Relating to Revenue and Taxation." If this article is bad for the reason last assigned, then much—if not most—of the existing revenue law of the State must fall
172 for the same reason. A great many analogous instances might be cited from that act. But we will confine ourselves to a few. Railroads and other public service corporations are required to report certain information upon which their assessments are to be based by the State Board of Valuation and Assessment. Their failure is penalized by — fine of from $50 to $1,000.00, and a suspension of the corporate franchise. Similar penalties were upheld, and a like act declared constitutional, in Louisville & Jeffersonville Ferry Co. v. Commonwealth, 104 Ky. 726. Distillers are required to furnish

certain detailed reports, under a penalty for failure of from $100. to $500.00 a day. (Sec. 1, sub-div. 4, Art. 12, Acts 1906.)

Liquor dealers are licensed, with elaborate procedure, for obtaining license, and for their revocation.

In a similar statute, a provision for licensing peddlers, required that all notes taken by them should be endorsed "Peddler's Note," or be void. The law was upheld as constitutional, although the question of the sufficiency of the title does not seem to have been raised. (Hays vs. Commonwealth, 107 Ky. 655.)

This same act provides for a State Board of Equalization, their appointment, duties and compensation; for a county board of supervisors, their appointment, duties and compensation, and likewise for the appointment of auditor's agents. All these matters are germane to the title "Revenue and Taxation," which is the subject of the act.

The last Constitution contained a similar provision to section 51, of the present Constitution. Under it, and indeed since the foundation of the Commonwealth, legislation has been enacted
173 under precisely the same or equivalent title, in which equally as wide range of treatment has been indulged as in this act. In Phillips v. Cin. & Cov. Bridge Co., 2 Met. 219, this court, commenting on that constitutional provision says:

"It should not be so construed as to restrict legislation to such an extent as to render different acts necessary where the whole subject matter is connected, and may be properly embraced in the same act."

And further:

"None of the provisions of a statute should be regarded as unconstitutional where they all relate directly or indirectly to the same subject, have a natural connection, and not foreign to the subject expressed in its title."

In L. & O. Turnpike Co. v. Ballard, 2 Met. 165, it was said:

"A more liberal construction of this clause of the Constitution will be not only more consistent with the objects intended to be accomplished by it, but will be found necessary in the practical business of legislation."

(Hoke v. Commonwealth, 79 Ky. 567; Chiles v. Drake, 2 Met. 146; Jacobs v. Louisville & Nashville R. R. Co., 10 Bush, 263; Conley v. Commonwealth, 98 Ky. 125; Weber v. Commonwealth, 24 Ky. Law Rep. 1726; Hyser v. Commonwealth, 116 Ky. 415; Sutherland's Stat. Constr., §93; Cooley's Constitutional Limitations, §145.)

174 Not only is every feature of article 3, above, logically connected, but the whole naturally pertains primarily to the subject of revenue and taxation. Besides, the subject has from the beginning in this State, and prior and since in Virginia, been treated as embracing the identical features now brought forward, so that if any one concerned in such legislation, whether a member of the assembly, or a land owner looking out for his interests, would naturally have expected to find such legislation under that title, and reasonably all that was germane to the subject treated under the one head.

One complaint is, that the measure is really not one of revenue, but of police; and that, therefore, it is not germane to the title. There will be found in this general act many features which partake of police regulation, as well as of revenue. This is particularly true of the most of the article devoted to licenses, such as liquor licenses, peddlers, pawnbrokers, billiard tables, pool rooms, exhibitions of circuses, and the like. Such measures might without any impropriety, have been classed under either head, as they truly pertain to each as they are treated of. On this subject Judge Cooley (Cooley on Taxation, 2 ed., §587) says:

"It has been seen that other considerations than those which regard the production of a revenue are admissible, and that regulation may be kept in view when revenue is the main and primary purpose. The right of any sovereignty to look beyond the immediate purpose to the general effect, neither is nor can be
175 disputed; the government has the general authority to raise revenue, and to choose the methods of doing so; it has also general authority over the regulation of relative rights, privileges and duties, and there is no rule of reason or policy in government which can require the legislature, when making laws with one object in view, to exclude carefully from its attention the other."

The primary purpose of article 3, is to raise revenue. Its incidental purpose is to regulate other rights. Also incident, is the disposal of that which, in default of the revenue sought, shall come to the State by way of penalties. As they will in such event belong to the State, to dispose of them in that way that will most redound to the public welfare as the legislature shall judge, is a logical continuation of the same general subject of legislation. That the legislature has the power to so dispose of what may be forfeited to it, we have no manner of doubt, nor has there been cited to us any case, or advanced any reason, to the contrary.

Fifth. The act is claimed to be void, as violative of the compact with Virginia.

The compact, so far as here involved, has already been set out in the foregoing part of this opinion. As may be naturally expected, that instrument has been before this court a number of times, as well as before the Supreme Court of the United States, for construction. It is conceded to be as obligatory upon this State to its fair intent as fully as if ingrafted in the Constitution of the State. Nay, more so, in that while the State might alter or abrogate pro-
176 visions of its own Constitution, it is without power to either alter or ignore the compact. (Green v. Biddle, 8 Wheat, 1; Lessee of Joseph Marblett v. Silk, 11 Pet. 1; Poindexter v. Greenhow, 114 U. S. 271.)

Among the first authoritative attempts on the part of this court to construe the compact was in Boone v. Helm, 4 Dana, 403, although it had been discussed indicating the views of certain of the Judges in Hays' Heirs v. McMurry, 1 Litt. 365; and in Beard v. Smith, 6 Mon. 430. In Boone v. Helm, this Court speaking through Chief Justice Robertson, respecting the clauses of the compact now in question, said:

"All these expressions, taken together, mean, even according to their literal import, this and only this; that as to the validity and effect of such claims to land as then existed under the Virginia land system for the district of Kentucky, the rights of the claimants, as then existing, whether perfect or inchoate, should be tested by the laws under which they had been acquired, and that Kentucky should not abolish those laws, or enact and enforce any statute destructive of the validity of such of those claims as were, according to the laws existing when they were acquired, valid and available. Then if any such claimant had a good entry, it—that is, the entry, should ever remain good, as a valid and legal location. If he had a survey good according to the law under which it was made, it—that is, the survey, should continue to be held as having been, when made, legal and valid. If he had obtained a patent, it—that is, the patent, should be deemed, in the Courts of Kentucky, to have vested in the patentee all the rights which were guaranteed by the
177 laws of Virginia existing when it was issued. And if, at the time of the separation, one claimant had a perfect, and another an imperfect title, to the same land, each, according to its degree, valid and legal, both shall ever be held, in the like manner, to have been then good, and neither of them shall ever be invalidated by Kentucky. This seems to us to be the utmost latitude of the literal and intrinsic meaning of the compact. And it does not interdict pro-pective legislation by Kentucky, for perfecting any imperfect title which was good, in its degree, at the date of the compact, or of the separation, or for maintaining her own just authority as a sovereign, in procuring revenue, giving proper repose to honest occupants, preventing vexatious litigation, or in enacting and upholding, pro-spectively, any other just system of public economy, which Virginia herself might have adopted without rendering, by retroaction, that invalid which was valid under her laws. It is admitted in argument, and could not be plausibly denied, that prospective limitation and revenue laws, by Kentucky, affecting rights to land acquired from Virginia, are not interdicted by the compact."

In Kendall v. Slaughter, 1 A. K. Mar. 378, involving the power of this State to change its limitation laws so as to give a shorter time than Virginia did at the separation for bringing actions, this court said:

"But whilst the legislative enactments of this country, are by the compact, not permitted to affect the validity of those rights, we are of opinion that instrument should not be construed so as to
178 preclude the legislature from either regulating the mode of action, or limiting the time, it should be prosecuted, for the purpose of asserting those rights.

"That the section alluded to, was not understood by the parties to that compact, as inhibiting the legislature from passing laws by which those rights might become forfeited, is, we apprehend, apparent from other parts of that instrument. For it is furthermore, in the latter clause of the eighth section provided, that no neglect of cultivation or improvement of any land, within either the pro-

posed State or that of Virginia, belonging to the non-resident citizens of the other, shall subject such non-resident to forfeiture or other penalty, within the term of six years," &c. * * * If, then, notwithstanding the compact, laws of forfeiture may be enacted, no reason is perceived why the legislature should not be allowed to regulate the limitation of actions. For although possession may, in process of time, ripen into a perfect right to the land, it does so, under the efficacy of the laws of limitation, operating in the nature of a forfeiture upon the failure of the claimants in not asserting the right in due time."

These views are fully sustained by the Supreme Court of the United States in Hawkins v. Barney, 5 Pet. 457. This action also involved the validity of a seven-year statute of limitation passed by Kentucky, and applied to a claimant under a Virginia grant, whereas the period of limitation in Virginia applicable to such actions at the time of the separation was twenty years. That court, commenting upon the compact, said:

179 "It can scarcely be supposed that Kentucky would have consented to accept a limited and crippled sovereignty; nor is it doing justice to Virginia to believe that she would have wished to reduce Kentucky to a state of vassalage. * * * Let the language of the compact be literally applied, and we have the anomaly presented of a sovereign State governed by the laws of another sovereign; of one-half the territory of a sovereign State hopelessly and forever subjected to the laws of another State.

"If the seventh article of the Compact can be construed so as to make the limitation act of Virginia perpetual and unrepealable in Kentucky, then I know not on what principle the same rule can be precluded from applying to laws of descent, conveyance, devise, dower, curtesy, and, in fact every law applicable to real estate. * * *

"The last member of the eighth article of this compact distinctly recognizes the existence of the power in Kentucky to pass similar laws; notwithstanding the restrictions of the seventh article, and also the probability of her resorting to the policy of such laws."

No one seems to have thought before that the power of the sovereign State of Kentucky was, or was intended to be, curtailed by the compact with Virginia respecting the right of the former to proceed in her own way to coerce taxes from all property within her dominion for her support. The right to levy and collect taxes from the citizens, or property within its jurisdiction, is in-

180 herent in a State; as a part of its coercive process, it may forfeit the title of recusant taxpayers, or distrain their property without judge or jury. The compact no more prevents the State from forfeiting the title of property whose owners refuse to list it and pay taxes upon it, than it denies to this State the power to levy the taxes. Nor does the compact affect at all the question of procedure, jurisdiction of courts, the subsequent devolution of the title, requirements as to registry of subsequent conveyances, or the future duties and obligations to the State of the owners of such titles.

The cases examined comment upon the fact, and lay stress upon the point, that whatever Virginia herself could have done in subsequent legislation, as affecting the titles in question, Kentucky might also do. As we have seen, Virginia, at the time of the separation, had provided a forfeiture of titles for a failure to pay the tax for three years, and has continuously since enacted such legislation. It was not a violation of the compact for Kentucky to enact the statute in question. It does not in the least impair or affect the validity of the patents issued by Virginia, or under Virginia surveys, nor does it alter the right of any holder of such patents that was acquired under the laws of Virginia. They took the patents subject to the right and power of the sovereign to compel the payment of taxes on the land in the future, and subject to the correlative power in the sovereign to forfeit the titles to the State as a penalty for the non-payment of the taxes.

Sixth. It is contended by appellant that the act in question is vicious because it seeks to extort an unlawful duplicate tax upon the same land. In the petitions of appellant is this paragraph:

181 "Your petitioner is advised by counsel learned in the law and believes that in all of said years and now, under the laws of the Commonwealth of Kentucky, whenever the occupant or occupants of any part or parts of any of said tracts have paid the taxes thereon which those under whom your petitioner claims ought to have paid or ought to pay the person so paying the tax shall be entitled to recover of the owner the amount of the tax so paid and interest, which shall continue a lien on the property upon which such tax was paid."

The laws of the Commonwealth referred to in the foregoing statement of the petitions are as follows:

"Any person having a lien on property upon which the owner has failed to pay the taxes, and has become delinquent, such lien holder may pay the taxes, interest and penalties thereon, and shall be subrogated to the lien of the Commonwealth, county or district therefor, and the sum so paid shall bear legal interest from the date of payment, and shall be collectible in the same manner as the original claim of the lien holder.

"Whenever the occupant or tenant of any land, or bailee or person in possession of any personal property, shall pay the tax thereon which the owner ought to pay, the person paying the tax shall be entitled to recover of the owner the amount of the tax so paid, and interest, which shall constitute a lien on the property upon which such tax was paid."

(Ky. Stats., §§4032, 4033, continued in force by Act of March 15, 1906, Article II, §§14 and 15; Acts 1906, p. 92.)

182 There is no such connection or privity between adverse claimants of land as entitles one to recover taxes voluntarily paid by him on the land, although he in fact did not own it, from another who did own it but failed to list it and pay the taxes.

That which the State taxes is the property of the claimant—not the land. The right to possess, the title or legal right of dominion,

is the property which the law protects, and is that property which it taxes. If two persons claim the same land, each having a title, but undetermined which is superior, shall the State stand back until their dispute is settled before it can exact a tax from the owners? For if one of them can lawfully refuse to list his claim, which is his estate in the land, then the other could also. The State creates property—that is, the right to a thing, by protecting its use and enjoyment; it maintains police to protect its security and that of its owner; courts in which his rights may be vindicated, and the whole fabric of social government which gives all value to every kind of property. In return the State exacts certain personal services from the citizen, and in addition a sum at certain intervals, called a tax, with which to defray the expenses of the government which he enjoys and which protects him in his rights of property. The State, then, may tax whatever is property within its jurisdiction. If one has an imperfect title to land, that is property, and it may be taxed, although another have a more perfect claim to the same land which is also taxed as his property. That is not double taxation.

183 There are many instances in which the same tangible thing supports several separate properties. For example, a corporate franchise is taxed, so is the property which is used in connection with it, and without which the franchise would have no appreciable value. Lands owned by corporations may be taxed, that is, the corporation's dominion and right in them. Based upon the land, the corporation issues shares to its stockholders; these shares, mere intangible things, may also be taxed against the share holders. Nor would that be double taxation, though it might be impolitic. A debt is taxable as the property of the creditor; that for which the debt was created if property is also taxed as the property of the debtor. The act of 1906 provides:

"It shall be the duty of each and every owner or claimant of land to pay all the taxes * * * and to list said land * * * for taxation."

It also provides:

"The fact that said land has been listed for taxation, or the taxes have been paid thereon by another claimant, shall not relieve against the duty therein imposed."

The provision existed under the General Statutes. (Gen. Stats. p. 1036.)

Double taxation is not per se unconstitutional. It is only when taxes are imposed twice by the same government upon the same property as against the same owner that they are inhibited, and then only by virtue of the clause in the Constitution which re-

184 quires all taxation to be uniform. It is only when there is a destruction of uniformity by virtue of the so-called double taxation that it is prohibited. The State is interested not only in having its taxes paid to it, but in having them paid by the persons who ought to pay them. The fact that the State makes a claimant in possession—though not having the best title—pay taxes upon his property, that is, his claim, does not exhaust the State's power to compel any other claimant of a title to the same land to list his

claim and pay taxes upon it. The statutes quoted above, and relied on by appellant, at the utmost would not give a claimant of land who paid taxes on it, a lien as against the true owner, if the latter also paid. When the legislature requires the true owner to list and to pay taxes on his claim, it is therefore no defense under this statute that another (a stranger to the title) has listed them and paid the taxes, and would have a right of action to recover for them if the State did not collect them from the true owner. (Simpson v. Edmiston, 23 W. Va. 675.)

Seventh. The act is claimed to infringe both the Federal and State Constitutions in that it attempts, so it is argued for appellant, to deprive citizens of their property without due process of law. This proposition involves the power of the State to forfeit lands of the owner or claimant because he failed to list or pay taxes on them.

The power of the State to levy the tax is not to be questioned. No more is its power to coerce its payment. As listing the property for assessment is a necessary step towards collecting the tax, the State must have as ample power to compel that step as any other in the process of collecting the tax, or its whole power in the
185 premises is reduced to the strength of the weakest incident. It is no longer controverted that the State may distrain the delinquent's property, may sell it by the most summary proceeding. No judicial action is necessary to perfect the title. "In what important particular does this differ from the case of forfeiture," says Judge Cooley in his work on Taxation, page 464, "except that to the proceedings which are to work the forfeiture there is added the one requirement of a public sale? But there are in the sale no elements of an adjudication; it does not stand in the place of one; its purpose is only to bring to the public treasury the tax for which the sale is made. Incidentally in the proceedings a purpose is kept in view not to sacrifice any farther than shall be necessary the interests of the owner; and to this end notice of the sale is required, with a view to invite competition among bidders. But we are not aware of any Constitutional principle that entitles a party to have his duty coerced by a public sale of property rather than by a forfeiture of it. A sale by a ministerial officer which, as the closing step in administrative action, is to divest the owner of his title, is as much obnoxious to the charge that it deprives him of his freehold without a hearing, as is the legislative forfeiture."

That text was written before the opinion of the Supreme Court in King v. Mullins, supra, in which, in summing up on the West Virginia Constitution and Statutes already noticed, the Court said:

"We hold that the system established by West Virginia, under which lands liable to taxation are forfeited to the State by
186 reason of the *owner* not having them placed or cause to be placed, during five consecutive years, on the proper land books for taxation, and caused himself to be charged with the taxes thereon, and under which, on petition required to be filed by the representative of the State in the proper circuit court, such lands are sold for the benefit of the school fund, with liberty to the owner,

upon due notice of the proceeding, to intervene by petition and secure a redemption of his lands from the forfeiture declared by paying the taxes and charges due upon them, is not inconsistent with the due process of law required by the Constitution of the United States or the Constitution of the State."

This Court in Marshall v. McDaniel, 12 Bush, at page 383, said that it was within the power of the State to provide for a forfeiture of the owner's title if he should fail to list or pay taxes on his land, but it was held in that case that before the forfeiture could become effective he must have an opportunity to be heard in the matter before some competent tribunal to try the question—not whether it was right that his title should be forfeited, but whether the facts existed which under the statute worked a forfeiture.

So in Harris v. Wood, 6 T. B. Mon. 643, this Court held that the State was not required in collecting its taxes, to submit the question of right, or of the taxpayer's liability to a judicial tribunal or to a jury; that such had never been the law of the land.

Under the act here involved, the owner is given a day in court. His title does not become forfeited till it is so adjudged in
187 an action in the circuit court, to which he is made a party, and is summoned if within the court's jurisdiction, or proceeded against regularly by publication otherwise, and a regular trial is or may be had. The inquiry would be in the trial; did he fail to list or pay the taxes within the time, and in the manner, prescribed by the statute? If he did fail, then the judgment will carry into effect the legislative fiat that his title shall be forfeited to the State; if he did not fail, then the proceeding to forfeit will be dismissed and he will be left with his title as it was before.

In this connection we will notice another objection made against the statute, which is that it is an ex post facto law; that it punishes an act, or omission, by forfeiture of property which when the act was omitted was not so punishable by law. But such is not the fact. It is not the failure to list in the years 1901, 1902, 1903, 1904 and 1905 that works the forfeiture; but it is the failure after the passage of the act in 1906 to thereafter list the property for the five years named, and before January 1, 1907. It was within the power of the legislature to forfeit for even one year's omission.

Eighth. It is assumed in argument against the validity of the act that any retrospective statute is unconstitutional. But such is not the law. The legislature may provide for retrospective assessment of property, and if it has been omitted, ought to do so. (Levy v. City of Louisville, 97 Ky. 394) as otherwise such property would enjoy an exemption to which it was not entitled, and thereby
188 impose an additional and unjust burden upon other taxpayers. There is nothing in our Constitution which prohibits retrospective taxation. Nor is there in the Federal Constitution. (Florida Central R. R. Co. v. Reynolds, 183 U. S. 471.) The only inquiry is, has the legislature clearly indicated its purpose to tax the property retrospectively? (Durret v. Davidson, 29 Ky. L. R. 401.) Under the language of this act there can be no doubt of such purpose.

Ninth. There are a number of other objections made to the statute by appellant, all of which may be grouped under the general complaint that it is harsh, oppressive and unjust. Were these objections well grounded, they would afford no basis for relief at the hands of the Court. The policy of the legislature may be looked into by the courts for the purpose only of interpreting statutes. If then they are found to be within the power of the legislature to enact, the business of the Court is ended. That the legislature saw proper to enact a harsher remedy than it might have done; that it allowed the minimum of grace to the taxpayer; that it imposed most onerous penalties for his defaults; that it imposed even greater penalties than it does as against other classes whose fault may be as great; that it does not even excuse infants, or married women; or persons laboring under disability, when the general policy of legislation is to deal more indulgently with those classes; are all considerations of expediency which appeal to the good sense and the conscience of the legislators. It is not tolerable in our form of government, with its distinct separation of powers, that acts of the legislative
189 branch should stand or fall according as they appealed to the approval of the judiciary; else one branch of government, and that the most representative of the people, would be destroyed, or at least completely subverted to the judges. We do not say that this act is to be regarded in the light of the history of its enactment and the abuses it was intended to remedy, as falling within the category described. There is abundant basis for the act, in which it will appear not only as reasonable, but as highly politic. All that we do mean to say is, that tested by precedent and principle we are unable to find that it violates any provision of the Constitution of the United States or of this State, or in any wise transcends the power of the legislative department of the State government.

Finally. Did appellant comply with the statute, so that the county Court ought to have listed the lands?

The petitions in these cases contained the same averment, of which the Pike county case is selected as a sample, as follows:

"Your petitioner claims to be an owner of the herein below described tracts of land, situated in the county of Pike, State of Kentucky, but not of the improvements thereon, nor of the surface of certain parts of each tract as hereinafter stated, to-wit:"

Then follows a description of land by calls and distances, which it may be assumed were sufficiently explicit to have located the several boundaries. The petition sets out the dates of issue and serial
190 numbers of the patents, and the instruments through which the petitioner derived title, namely, unrecorded deeds from Charles B. Hillhouse, and that the title of Hillhouse was derived by deeds and contracts to convey, made by him with

"others claiming by inheritance, by divers mesne conveyances, from those to whom said tracts of land respectively were granted by letters patent."

The petition then states that the lands had not been assessed for any of the years 1901 to 1905, both inclusive, either by the petitioner or by any one under whom it derived title, and that no part

of the taxes for any of those years had been paid. But the petitions alleged that parts of each of said tracts had been listed for taxation for each of said years by others than the plaintiff, and those under whom it claimed, and that taxes under this listing have been paid by strangers. The petition then continues:

"Your petitioner does not claim to be the owner of any improvements on any of said tracts of land, nor of so much of the surface of said lands as has been adversely held by others for a period sufficient to toll your petitioner's right of entry."

The defects of these petitions are, 1st, they do not disclose the names of the owners, and therefore do not show the proper persons to be assessed; they show that appellant is only "an owner;" of what part, or in what proportions and by whom the remaining portions are owned is not shown. 2nd. They do not "so describe
191 the land proposed to be assessed" as that, in the language of the statute, "it can be identified:" the land to be assessed *in* not only specific tracts so described in their entirety as to be susceptible of accurate location, but the interest of the listing owner, if he owns less than the entire tract must be so described as that it may be identified. 3. Some of the patent boundaries described lie only partly in the county wherein it is proposed to list it. The petitions show that fact, but do not show where, in what part of the county, the parts to be assessed do lie; nor do they show where the excluded parts which it is admitted do not belong to the petitioner lie, so as that the court could with reasonable certainty and intelligence fix a valuation upon that part which is assessed. For lands which lay upon the main Big Sandy River, in Pike county, would have a much greater cash value than if they lay across a mountain range miles away from a navigable river or a railroad. If the claimant does not own the whole tract described, he must show what portion he does own or claim. A failure to so describe exclusions as that they may be identified leaves the description as indefinite as if the original tract could not be identified.

Nor are these objections merely technical, interposed whimsically so as to defeat the proposed listing of the land, and so as to work its forfeiture. They are each substantial, and have solid merit to support them. Only the title of the person assessed passes by a tax sale. (Johnson v. McIntyre, 1 Bibb, 295). If lands are assessed in the name of the wrong persons, no title passes by the tax sale.
(Wheeler v. Brammel, 10 Ky. L. R. 301; Spalding v. Thomp-
192 son, 16 Ky. L. R. 836.) The listing of partnership property in the name of an individual member of the firm, is invalid to pass the partnership property under tax sale. (Ferguson v. Clark, 21 Ky. L. R. 697.) A tax deed for one hundred acres of six hundred acres was held void in Humphries v. Huffman, 33 Ohio St. 395. The description in the deed must be one that identifies the land with reasonable certainty. (Cooley on Taxation, 516; Gooch v. Benge, 90 Ky. 393.) In the last named case, it was held that the description in the sheriff's deed must be so accurate as to "enable the officer selling it and those disposed to purchase to find it and ascertain the character of it by the description given." The description in the deed and the assessment roll must agree, or the title fails to

pass. (Carlyle v. Cassady, 20 Ky. L. R. 562). A sale for taxes that have been paid, is void.

Therefore it is of the first consequence that the assessment should be such as that if the lands were sold under it, the title of the taxpayer would pass. Otherwise, no one would be justified in bidding at the sale, and the State would get none of its taxes in spite of its efforts. Furthermore, if the taxpayer did not pay within the time fixed in the Statute, and the State or county elected to forfeit his title, if the assessment was ineffectual the proceeding to forfeit must fall by the way. As the non-resident may not be reached otherwise for the tax than by the proceeding in rem, it is competent and necessary for the State to have in the first instance such an adequate list as will satisfy every requirement of the law as to passing
193 a valid title if a sale or forfeiture of the land should be necessary to realize the tax. (Commonwealth v. Tobacco Company, 107 Ky. 1.) The purpose of the legislature was to enforce, under the extreme penalty of forfeiture for failure, such a listing of the property as would in the future prevent its escape from taxation, as it had been enabled to do in the past because of statutes so loosely drawn as that no title would pass in case of default. And as the owner was a non-resident, or might be, a penalty of a fine would be wholly inadequate to secure the listing, as owing to his absence from the State jurisdiction could not be obtained to assess the fine in a criminal or penal action.

An assessment under the offer made by appellant would not have enabled the State to sell any particular piece of land, or any particular interest in any particular parcel, so as to pass the title of appellant and the others claiming with it. The petition was so vague and indefinite as to utterly fail to meet the requirements of the Statute.

It does not answer to say that the taxpayer did not know his property or its description. He is required to know it, and to furnish it so as the property may be certainly identified from it; nor is it an answer to say that it would be too expensive for him to make the necessary investigation.

Wherefore we conclude that the county courts were right in refusing the lists, and the circuit court's judgments so holding are each affirmed.

The whole Court sitting.

194 Wm. J. Hendrick, Hoppin and Berard, Hazelrigg, Chenault and Hazelrigg; John Harris Hendrick, Robert L. Miller, for appellant.

N. B. Hays, Att'y Gen'l; Chas. H. Morris, Hager & Stewart, T. H. Paynter, W. H. Wadsworth, David Baird, Z. T. Vinson, Edw'd W. Hines, C. C. McChord, for appellees.

195 And afterwards at a Court of Appeals held at the Capitol at Frankfort on the 15th day of January, 1908, the following order was entered, to-wit:

Pike.

EASTERN KY. COAL LANDS CORPORATION
v.
COM'LTH.

Floyd.

SAME
v.
SAME.

Knott.

SAME
v.
SAME.

Letcher.

SAME
v.
SAME.

Came the appellant in the foregoing cases by counsel and on motion is given 30 days extension of time to file a petition for rehearing.

And afterwards at a Court of Appeals held at the Capitol at Frankfort on the 19th day of February, 1908, the following order was entered, to-wit:

Pike.

EASTERN KY. COAL LANDS CORPORATION
v.
COMMONWEALTH.

Floyd.

SAME
v.
SAME.

Knott.

SAME
v.
SAME.

Letcher.

SAME
v.
SAME.

Came appellant in foregoing cases by counsel and on motion is given 30 days further extension of time to file a petition for rehearing.

196 And afterwards at a Court of Appeals held at the Capitol at Frankfort on the 4th day of March, 1908, the following order was entered, to-wit:

Pike.

EASTERN KY. COAL LANDS CORPORATION
v.
COMMONWEALTH.

Floyd.

SAME
v.
SAME.

Knott.

SAME
v.
SAME.

Letcher.

SAME
v.
SAME.

Came the appellant in foregoing cases by counsel, and filed a petition and moved the Court to grant a rehearing, which motion is submitted.

The petition mentioned in the foregoing order is in words and figures as follows, to-wit:

197 Kentucky Court of Appeals.

EASTERN KENTUCKY COAL LANDS CORPORATION, Appellant.
vs.
THE COMMONWEALTH OF KENTUCKY, Appellee.

Petition for Rehearing.

It is with reluctance that counsel for appellant have gained their own consent to prepare and file this petition for rehearing.

They are well aware how irksome is the task to both the Court and counsel.

But their duty to the Court, no less than their obligations to their client, impel them to the execution of the work. So clearly has the conviction been borne in upon them after careful study of the opinion rendered herein, that the Court has fallen into dangerous and grievous error, both of law and fact, that it seemed to counsel incum-

bent upon them in view of the importance of the principles of law and the magnitude of the interests involved, and the delay in developing the territory in question which must result from continued litigation, to bring these errors to the attention of the Court, before taking the judgment for review to the Court of last resort.

We have no desire or intention to reiterate any of the arguments presented in appellant's brief, but respectfully ask the permis-
198 sion of the Court to answer the Court's statements of fact and to comment upon the Court's rulings and omissions to rule on questions of law.

For which purpose we submit here the following

Analysis of the Opinion.

(References are to pages of "Advanced Sheets" of Vol. 32 of Ky. L. Rep'r.)

The opinion begins by setting forth the terms of Article III. of the Revenue Act of 1906, and then states what, according to the views of the Court, is "so much of the history of the State as will disclose the evil sought to be remedied by this Act in order that the legislative purpose may be more surely divined" (Opinion, p. 136).

The appellant, however, has been unable to find anything in this history that justifies, or even explains, the "legislative purpose," as divined by the Court to confiscate the appellant's title to its lands without compensation therefor.

(1.) The complexities and defects of the Land Laws of Virginia and Kentucky, referred to by the Court (Opinion, pp. 136-138), are matters for which neither the appellant nor the patentees, under whom it claims, were or are responsible.

On the contrary, these complexities and defects of the law increased the risks incurred by the earliest patentees in paying into the Treasury of the State the price for land which could be located only amidst difficulties and dangers, and for a title thereto which could not be obtained and perfected except with much labor,
199 and sometimes required litigation to sustain, against the "frauds and oppression" (Opinion, p. 138) of later patents of the same land.

(2.) The Court's surmise that "perhaps the delay experienced by the Kentucky pioneers in obtaining the consent of the mother State for a separation was due to the influence of those who had taken up large boundaries of land in Kentucky for speculative purposes" (Opinion, p. 137), seems to be without any evidence to support it.

On the contrary it appears that many of the patentees in the grants under which appellant claims by title from their heirs were themselves among the earliest pioneers, protecting the country against Indians, contributing to the building of the first court houses, members of the earliest constitutional conventions of Kentucky, donors or trustees of land upon which to build the earliest towns, justices and clerks of the earliest courts, representatives of their neighbors in the earliest sessions of the Kentucky Legislature, surveyors, one

of them, it seems, a nephew of the light of constitutional law, John Marshall, Chief Justice of the United States; another of them afterwards Governor of the Commonwealth (Appellant's Brief, pp. 7-14).

Even if the facts were as surmised by the Court to be possible they would, of course, neither justify nor explain an attempted confiscation by the Legislature.

(3.) Grants of large tracts of land.

Still seeking for the intention of the Legislature the Court says:

200 "There was a constantly growing tide of immigration into the newly opened territory. Many of the immigrants, probably most of them, were intending settlers. But, as might have been expected, speculators and adventurers not a few were attracted thither by the glowing accounts which were carried back to the older settlements in the east. Large tracts, some of them for many hundred thousand acres, were entered, located and surveyed, while many thousand smaller tracts designed for immediate or present actual settlement, were taken up at the same time" (Opinion, p. 136).

The tracts of which the appellant claims the parties not already lost by adverse possession, vary in extent generally between 5,000 acres and 20,000 acres, almost all of the tracts being of a quantity between these two limits (see plaintiff's petitions to list in the Transcripts on this Appeal).

If the size of these tracts were a reason for confiscation that reason would apply to the sources of title under which a very great part of the land in the Commonwealth is now held, since such lands in other parts of the State as well as in adjoining States are very generally held and occupied under titles derived from Virginia patents conveying tracts no less large. It would surely be a new doctrine in law to hold that land could be forfeited because the legislature of these days were of opinion that the legislature a century ago made grants of too great an extent.

Nor does the extent of these grants seem to justify the

201 apparent stigma which the Court seems to intend to place upon the patentees by the designation "speculators and adventurers" of ill favor compared with the "intending settlers" and the "unlearned backwoodsmen" (Opinion, p. 138).

The character of the patentees has been already shown (§2, supra). Such of them as were not themselves "unlearned backwoodsmen" were generally joined in interest with such hardy backwoodsmen or hunters, one supplying the funds to purchase the warrants, the other being entitled to from one-third to one-half the land for "locating" the warrants.

In the words of one of the historians of Kentucky

"Many persons in the Atlantic parts of Virginia, and other States, who had never seen Kentucky, and others in Europe and in the West Indies, who had heard its fame only, had sent warrants to the country, in order to take up land. Many who had come here for the like purpose, being deterred by the apprehension of danger from exploring the lands, and fixing on objects of description for their locations found themselves possessed of warrants which they could

not realize while, on the other hand, many of the early settlers and hunters in the country, availing themselves of the knowledge of these circumstances, and of the rich lands, became the locators of such warrants; upon contracts to share the land thus acquired. These contracts were generally for a third part of the land saved thereby; but afterwards when vacant land became more scarce, and warrants more plenty, one-half was demanded for location, and conceded by the holders of warrants."

Marshall, Hist. of Ky. (1824), Vol. I., p. 105.

202 (4.) The cheapness of lands in early times.

Continuing to call upon History to enlighten it respecting the legislative purpose the Court says:

"Vacant lands were supposed to be plentiful. Consequently land was then the cheapest of commodities, if it might be so called. Many a noble estate, as it is now, passed then in exchange for a rifle, gun or a powder flask" (Opinion, p. 138).

This statement seems to be intended to include the prices paid by the patentees to the State for the lands since it is in accord with the reference a little later in the opinion to the "pittance paid into the treasury for the warrants" (Opinion, p. 139).

Although appellant's counsel are unable to see how the price paid over a century ago for lands can either justify or explain an attempted confiscation of them to-day, it is submitted, in the interests of truth as well as of justice, that the Court's statement is without any foundation as respects the patents under which appellant claims title.

As shown by the warrants, the numbers of which are stated in the patents, and which warrants, as well as the record of the Letters Patent, may generally be found on file in Land Office Department of the Auditor's Office at Frankfort, the price of these lands to the patentees, under whom appellant claims (almost all the warrants having been issued between the years of 1780 and 1783), was

"one pound and twelve shillings current money per acre."

203 The Court has been misled perhaps by a later reduction in price from two dollars to two cents an acre, which is referred to in a recent opinion reviewing the law of Virginia (Fay vs. Crozer, 156 Fed., 490). This reduction in price probably led to that flood of junior surveys covering land already entered by others, which was a hardship to those who had made the earliest entries, but does not seem to be a reason why insult should be added to injury by attempting to forfeit their title because others had clouded it with junior claims.

(5.) The failure of prior Legislatures to provide for transcribing the records of the titles of the true owners into the records of the new counties as they were created (Opinion, p. 138) does not justify or explain the attempted confiscation, and it is impossible to conceive that such records of new counties were, as the Court says, "doubtless most generally supposed to contain all necessary data for the guidance of settlers in taking up and conveying land" (Opinion, p. 138). On the contrary, the records of the origin prior to 1835 of title from the State were not at the County seats but at Frank-

fort, and since 1835 all the "patents" issued by State officials in this territory have been bogus and "absolutely void," as declared by the statute, since the land had been previously surveyed, which was notice by the Commonwealth that any one seeking to acquire land from the State must first examine the records at Frankfort and learn there whether the land had been already appropriated by others.

There is perhaps no State in the Union where "all necessary
204 data for taking up land," i.e., acquiring title from the State, can generally be found at the County seat alone.

The splitting up of counties has been going on for over a century in all the older States of the Union. It has not been customary to provide for having transcripts of the old records at the new County seats; but the lack thereof has not been deemed a reason for confiscating the old titles.

(6.) Legal right of the patentees and alleged "moral right" of occupants.

"While the people in that section may have been unmindful of the underlying insecurity of their titles, the subject has been one of constant concern to the State. The situation was one of practical difficulties. On the one side was the legal right of the original patentees. On the other was the moral right of those who had in ignorance of the truth, bought and settled upon some parts of these same lands" (Opinion, p. 139).

This finding by the Court of the "moral rights" of settlers under junior claims is, it is submitted, either irrelevant or not founded upon fact. If it refers to the early settlers it is irrelevant because the heirs of these early settlers by cultivation or enclosure of the bottom lands for many years have acquired title by adverse possession to such bottom lands which needs no legislative confiscation. Probably almost all the "bottom" lands have been thus acquired. If the Court's finding of "moral right" refers to the "occupants" intended to be benefited by Article III., it is not
205 well founded because this statute is intended to vest in them title to the wild lands which they have not acquired by adverse possession, since they have neither enclosed or cultivated them, but seek to hold them under claim of color of title originating in bogus "patents," elsewhere referred to in this argument, which "patents," for the greater part of the lands in question were issued by Kentucky offic[illegible] in the teeth of the statutes of Kentucky, in comparatively rece[illegible] years, when there were bright prospects that a railroad would soon be built through the Big Sandy Valley.

Again let it be stated that the question is not whether settlers in good faith, who for many years have cultivated lands in this locality, have a "moral right." That was conceded by appellant on the argument, but it does not affect generally the wild lands; and such generally are the lands which would be affected by Article III. if it were valid.

Who has the "moral right" to these wild lands?

Is it the State who has been twice paid for them?

The settlers who have not cultivated them and paid but five cents per acre for them?

The mineral companies who have bought alleged "moral rights" from the settlers and paid generally from fifty cents to a few dollars per acre therefor?

Or is it the heirs or other representatives of the ancient patentees who paid one pound twelve shillings current money per acre for land which they sometimes shared with the locator and which their heirs are now sharing with those who have spent much time and money in discovering the true owners and vindicating their title?

206 In the execution of the purpose of consolidating the claims of alleged title by adverse possession with the titles under the ancient patents the appellant contemplates that the occupants will receive not only much more than the amount of taxes on lands to which they have no legal title, but also that appellant will recognize all the "moral rights" that are visible, and will be also, as it were, blind to the invisibility of many other claimed "moral rights," and treat the claimants as if such rights were not "the baseless fabric of a vision."

(7*a*.) Alleged innocence and status of settlers.

"As new counties came to be formed, as they were rapidly enough, new county seats, with new offices and new records (without provision for transcribing the old in so far as they affected the new counties), were created, and were doubtless most generally supposed to contain all necessary data for the guidance of the settlers in taking up and conveying land. It resulted that new patents were issued for lands already appropriated by previous grants. In many instances several patents overlapped the same land. This went on with little change for nearly a hundred years. The recent and present occupants were innocent enough of knowledge or purpose, it may be safely assumed to do ought than follow the course of the law, buying from the State in confidence and selling among themselves with assurance that which they had bought, paid for,

207 and at great sacrifice of labor, means and care, erected into permanent homes. It now develops, and has been known for some time, that all or most of the vast territory lying to the northwest of the Cumberland mountains, and west of the Tug Fork of Big Sandy River, to a point west of the Main Kentucky river, was appropriated under entries and surveys made by virtue of the laws of Virginia before the separation in 1792. Few of those entries were ever settled upon. So far as the new settlers knew in fact, in every probability, the lands were unappropriated. The generations of a century have thus increased, and by actual occupancy, by personal industry and thrift, and by all the means by which Americans create a Commonwealth, they have fastened themselves to the soil in the belief that they have inherited it from their fathers, or purchased it honestly from their neighbors, and that it is theirs. Notwithstanding that millions of acres have thus been reduced to that kind of actual possession and for such a period as to ripen into a perfect title in spite of its original state, and that the population of this territory is now more than 300,000, there are many hundred thousand acres of these lands unfenced, whose stores of mineral and mantels of forest have remained in their natural state until the

present hour. Commercial necessity and enterprise in recent years are opening this region to the markets, and what was once of small value has become enormously important and valuable."

Opinion, pp. 138-139.

208 The appellant submits that all the italicised portions of this part of the opinion are not well founded in fact.

If the offices of the new counties were "supposed to contain all the necessary data for the guidance of settlers in taking up land," were the county officials issuing the bogus patents ignorant of the terms of the statute which on its face states that the same shall be void if the land had been previously surveyed? Were the lawyers in this locality all ignorant both of this statute and the decisions of the Court of Appeals thereon? Were they ignorant also of all the cases in which Virginia patents for lands in the territory which the Court says Article III. had in mind, have been vindicated by the Court of Appeals, some of them within the last past few years (28 Ky. L. R., 1246; 23 Id., 1323; 27 Id., 292)?

Is it credible that these settlers were ignorant of the "incubus" that their representatives in the Legislature and in Constitutional Convention were, according to the opinion of the Court (pp. 139, 141), continuously trying to be rid of? or that the county officials, who were issuing "patents" declared to be absolutely void if the land had been already appropriated, would not inform an applicant of the conditions under which such a "patent" was taken?

The "County Court Order Law" of 1835 and its reenactments clearly were intended to take up the few sparce, scattering, small tracts of land of Kentucky which might have been overlooked in the prior appropriations of land. The price (five cents per acre) was extremely low, as was not improper in view of the fact that such pieces would be hard to find, since as early as 1783, "warrants had been issued for more land perhaps than was to be found
209 in the country (Kentucky); certainly for more than was valuable," as was said by Chief Justice Marshall in Hunt vs. Wickliffe, 2 Peters (U. S.), 208, and since the act declared absolutely void any appropriations of land that had been previously surveyed for others, which provisions made it essential that an investigation should be made of the records of Frankfort to discover what prior appropriations had been made.

If the occupants generally were "innocent enough of knowledge or purpose" regarding these Virginia patents, why is it that for many years it has been unsafe to go into these hills to look for the "corners" of the surveys on which the Virginia grants were founded?

The statement beginning "It now develops and has been known for some time" is, it is submitted, incorrect. It has always been known. The books contain many cases of Virginia patents covering this territory, copies of many others of them or references to them are on the records of many of the counties referred to by the Court. The surveys themselves on which these Virginia patents were issued are generally in the county offices.

It is difficult to find any reason for the Court's conclusion that

"so far as the new settlers knew in fact, in every probability, the lands were unappropriated."

But it is needless too curiously to inquire into the state of consciences of the citizens. Some of them, doubtless, acted in entire good faith and were guileless. Appellant has already many friends among them and hopes to make friends of almost all, if it can overcome the persistent mendacities and machinations of its enemies; in which event, it is believed that the occupants will receive
210 in future much more consideration and benefit from appellant than they have received or ever will receive from its enemies.

If any of the settlers have been misled into a false security, who is responsible? Is it the true owner of the land or the Commonwealth or its officials?

Again counsel for appellant repeat that this Article III. does not affect the long settled and enclosed or cultivated lands, and any attempts to invoke the rights of the occupants of such lands as a support for this atrocious statute are unjust to the intended victims—the true owners of the wild lands that are really sought to be confiscated.

(*b.*) If the Commonwealth in the past had exercised its real police power in protecting the lives of those seeking to exercise the ordinary rights of property over the lands in these mountains, its representatives would perhaps not now be tempted to claim the exercise of a bogus "police power" of "outlawing" the titles of the true owners, for the benefit of the real outlaws who have been unrestrained by the police.

It matters not, if the major part of the community are like the great majority of the people of other parts of the Commonwealth—law abiding and with the good will of every just man that every other should have his own. A few murderous ruffians in each county, unrestrained by the law before commission of crime and unpunished thereafter, may effectually "outlaw" all rights of person and property of those who cannot, or will not, resort to the same methods.

211 The case cited in the Appellant's Brief (p. 124) showing from the records of the Court of Appeals itself the impossibility of even surveying the boundaries of early patents to lands in this locality in the year 1892, was only a single instance of what has been true for years before and ever since. In the pending suits to forfeit the appellant's lands it has pleaded but has been denied by the local court the opportunity to prove:

"That during all the said years, 1901, 1902, 1903, 1904 and 1905, and for many years prior thereto and ever since continuously until the present time, those under whom this defendant claims, and this defendant ever since it has acquired title thereto have and has been prevented from entering upon said lands to possess or enjoy any part thereof or to ascertain what parts thereof have been adversely held for a period sufficient to toll the right of entry of those under whom this defendant claims or of this defendant, by a state of violence and by fear of bodily harm and of death, threatened by some

of the occupants of parts of said lands against any and all persons claiming title or interest under the grants from the Commonwealth of Virginia set forth in the plaintiff'd petition herein, and under which this defendant claims title and interest as an owner of the parts thereof whereof the right of entry has not been tolled by an actual adverse possession for a period sufficient to toll the right of entry of this defendant, and those under whom this defendant claims."

Amended Answer of Appellant, §5.

212 In the above mentioned pending suits the appellant in the cause at bar has also pleaded, but by the same local Courts has been prevented from proving, that on the filing of the appellant's petitions to list its lands for taxation in December, 1906, in the County Courts of Pike and Floyd Counties, the enemies of the defendant

"claiming mineral and timber rights under junior claims within the boundaries of Defendant's elder grants, immediately began a systematic effort to array all local interests against the Defendant, and by threats of assassination, menaces of violence, personal injury and disgrace sought to array local prejudice against this Defendant and to intimidate and terrorize its Counsel, agents and employees, by menaces and threats of personal violence and injury, and on the day set for the hearing in Floyd County, January 14, 1907, brought or caused to be brought to the County Seat and into the Court Room, where the hearing was had, an excited, angry crowd of armed men for the express purpose of intimidating Counsel for Defendant, influencing the Court and preventing Defendant from securing an assessment for taxation of the lands described by Plaintiff in its Petition.

"That the Floyd County Court dismissed the petition of Defendant, and thereupon, owing to the inflamed state of the people, it was agreed that a similar order to that entered in the Floyd County Court should be entered in the Pike County Court, which was done accordingly.

213 "That on January 15th, 1907, the hearing was had in Pike County Court, when the [same persons] brought or caused to be brought into Pikeville, the County Seat, and into the Court House, where the hearing was had, an excited, angry crowd of armed men for the express purpose of intimidating Counsel for Defendant, influencing the Court and preventing Defendant from securing an assessment for taxation of the lands described by Plaintiff in its Petition."

(8.) Failure of the holders of the grants

(*a.*) To develop the lands;

(*b.*) To clear the lands for settlement;

(*c.*) To tenant or work the lands.

At this point the Court reverts from a consideration of the innocence of the settlers to take up again the iniquities of the true owners of the land deemed sufficient to justify the "outlawing" of the true owners' title.

(*a.*) The Court says:

"The holders of these old grants during all these years have taken no part in the development of the section where these lands lie" (Opinion, p. 139).

Again, it is necessary to call to the attention of the Court the character of the lands in question. These lands, as was well said by Mr. Chief Justice O'Rear very recently, "are nearly all un-
214 enclosed forests" (Northern Coal and Coke Co. vs. Nield, 29 Ky. L. R., 188), and, as stated in the Opinion of the Court in the case at bar, "Commercial necessity and enterprise in recent years are opening this region to the markets" (Opinion, p. 139). The Court might have been more specific, and might have stated that the building of a railroad through the Big Sandy Valley was opening this region to the markets.

The reason other than the absence of a railroad, why the land in this locality has been slow in development and the efforts of appellant and its incorporators and their associates, to hasten that development are stated (in appellant's pleading in suits now pending in the local courts, to forfeit appellant's title) as follows:

"That for many years prior to the incorporation of this defendant the titles to the lands described in the plaintiff's petition herein had been unsettled because the true title was vested in those who were entitled thereto under and by virtue of the grants from the Commonwealth of Virginia referred to in the plaintiff's petition herein except in so far as the right of entry of said true owners to parts thereof had been tolled by an actual adverse possession by others for a period of time and under the other conditions required by law to toll such right of entry of said true owners; that the evidence regarding the origin, condition and extent of actual adverse possession to any parts of said lands, was generally indefinite, conflicting and not of record, and the threats by some of the occupants of violence against any and all claiming title under said
215 grants from the Commonwealth of Virginia prevented said true owners from entering upon any parts of said lands or from ascertaining or protecting their lawful interests therein; whereby the development of the resources of said lands had been retarded, because the title thereto was regarded by investors as unmarketable; that for the purpose of uniting under one ownership the titles, claims and interests of those deriving the same from said grants from Virginia and of consolidating the same with claims by adverse possession of the same lands in order to have a marketable title thereto, for purposes of development of the resources of said lands the defendant Charles B. Hillhouse and his associates had already, prior to the incorporation of this defendant, spent much time and money in examining records in the States of Virginia and Kentucky and elsewhere, and had acquired much information relating to what appeared to be such earliest titles of record claims and interests in the Counties of Pike, Floyd, Knott, and Letcher, in the State of Kentucky, and the claimants thereof, and had contracted to purchase from some of such claimants, and was then negotiating with and expecting to purchase from many other claimants of similar titles, claims and interests in and to lands in said

counties, the aggregate quantity of land covered or affected by such titles, claims and interests purchased or sought to be purchased by said Hillhouse from such claimants being between three hundred thousand acres and five hundred thousand acres;"

216 "That thereafter, on the 8th day of February, 1906, this defendant, Eastern Kentucky Coal Lands Corporation, entered into an agreement with said defendant Charles B. Hillhouse, in writing and under the seals of the parties thereto, executed, acknowledged and delivered on said 8th day of February, 1906, whereby, among other things, said Hillhouse, for a valuable consideration, duly agreed to sell, and on receipt of the consideration therein-stated, to convey, to said corporation (to wit, this defendant), or its assigns, any of such titles, claims and interests then or thereafter purchased by said Hillhouse, that said corporation (to wit, this defendant) should elect to purchase. That immediately thereupon said Hillhouse proceeded diligently to fulfill said agreement and to complete negotiations and purchase such titles, claims and interests, and has ever since continued so to do, and said Corporation (to wit, this defendant) has from time to time elected to purchase many of said titles, claims and interests in and to the various tracts of land described in the plaintiff's petition herein; and by deeds from said Charles B. Hillhouse to this defendant dated and duly acknowledged and delivered on the 21st and 24th days of December, 1906, in pursuance of said Hillhouse's prior agreements to convey to this defendant including the aforesaid agreement of the 8th day of February, 1906, said Charles B. Hillhouse for valuable considerations duly conveyed to this defendant said Eastern Kentucky Coal Lands Corporation, titles, claims and interests in and to each and all of said tracts of land which

217 said Hillhouse prior thereto had acquired by deeds to him duly executed, acknowledged and delivered by many owners of undivided interests in said tracts of land respectively."

If the Court is looking for those who are preventing development of these lands is it too much to ask that the Court, before condemning the appellant, will cast a scrutinizing eye upon those who, under the borrowed mask of the Commonwealth, are thwarting and hounding the appellant?

As illustrating the dread of capital at present conditions and its eagerness to build upon a secure foundation, pending negotiations in the Spring of 1907, between representatives of appellant and of the Northern Coal and Coke Company, the appellant arranged, through channels open to it, for an investment of several millions of dollars in the development of the timber resources alone of this territory, much of which would have been distributed to the people who live in the territory. The negotiations proved abortive and capital shivered and retired, because of the conflict in titles.

The incorporators of the appellant began to endeavor to settle titles in this locality years before the enactment of the atrocious "Article III."

The development of this part of Kentucky, like that of most other places everywhere, cannot be quietly effected by occupants

alone. The purses as well as the brawn of the despised and hated "furriner" are needed. The appellant represents both sides. Among its hundreds of stockholders are hundreds of citizens of Kentucky, associated most amicably with hundreds of citizens of other States,
all united and vociferous in an indignant demand for "equal
218 protection of the law."

(*b.*) Failure to contribute to clearing the lands for settlement.

Another ground of indictment by the Court of the true owners is that

"They have contributed nothing to clearing the lands for settlement." (Opinion, p. 139.)

Once more, we ask the Court to remember the character of these lands.

A report of officers of the Federal Government speaking of the Elkhorn coal field, which includes part of the land in question, may be applied generally to all.

"The valleys are narrow and steep walled, rising abruptly several hundred feet to narrow ridge tops. There is practically no level land except the narrow valley floors, to which settlement is confined."

"Contributions to Economic Geology. 1906. (Bulletin No. 316 of U. S. Geological Survey, Washington. Government printing office.) (P. 42.)

The main effect of "clearing" these wild lands on the hill slopes would have been to denude them of timber. The "occupants" of adjoining land have already quite sufficiently attended to that. These lands are not well fitted for agriculture. Their office is the
production of timber and the yielding of coal and other
219 minerals, for which there were no adequate transportation facilities until very recently. The place for settlements is in the bottoms.

So that even *if* the owners might not plead vis major and a violent prevention they seem not to have been in fault for failure to clear the lands for settlement.

(*c.*) Again, the Court condemns the true owners because:

"They have not tenanted them. They have not worked them" (the lands).

Opinion, p. 139.

Lands that are of the character already stated cannot be "tenanted" or "worked," especially when the proteges of Article III, would regard a tenant of a "Virginia Granter" as highly offensive, and some of them might take effective means to "outlaw" such a tenant. (Supra, § 7*b.*)

(9.) Alleged failure to add to the State's strength and stability in peace and war.

As still *another ground for "outlawing"* the true owners, the Court says that they have not "done ought to add to the State's strength and stability in peace or war." (Opinion, p. 139.)

There seems to be no evidence whatever in support of this statement. On the contrary, many of the patentees under whose title the appellant claims, were pioneers, members of the first Constitu-

tional Conventions of Kentucky; founders of the early towns,
220 officers of the military forces of the Commonwealth, &c. (Appellant's Brief, pp. 7-14.)

Many of their descendants, through whom appellant claims title, have been prominent in the history of the Commonwealth. Hundreds of them who are stockholders of the appellant are residents of Kentucky.

There is no evidence that they are not fulfilling all their duties as faithful citizens of the Commonwealth.

It is true that there are hundreds of others of such heirs, who reside in other States of the United States. But there is no evidence that they are not adding their share to the strength and stability in peace and war of the State of which they are citizens, and of the United States, the common country of Kentuckians and non-Kentuckians.

The opinion of the Court seems to be fruitful in new doctrines But is it to be understood that any one who is not a resident of the State and of the county shall be regarded by the Court as well as by the occupants as a "furriner" who is to be "outlawed"?

(10.) Alleged withholding by grantees and claimants under them of all consideration to the Government except alleged pittance for treasury warrants.

Another of the causes enumerated by the Court as sins of the true owners that may have induced the legislative intent to "outlaw" their title upon the charge of a still different delinquency, is that

"Every consideration to the Government (save the pit-
221 tance paid into the treasury for the warrants) which entered into the grant by the State, has been withheld or disappointed by the grantees and those claiming under them." (Opinion, p. 128.)

It has been already shown what the price per acre (which the Court calls a pittance) really was (supra, §4). The lack of grounds for the other parts of this statement of the Court are considered elsewhere in this argument (supra, §§8, 9).

(11.) Alleged failure "to respond to the imperative command of the law."

The law, it is submitted, did not command the owner to pay taxes when the taxes on the same land were paid by an adverse occupant or lienor for improvements, who was thereby under express provisions of the statute law subrogated to the Commonwealth's claim against the true owner (Brief, p. 78).

The Court assumes that none of the owners have ever paid taxes on their lands. There seems to be no evidence before the Court to support this statement and we may safely assume that there was none before the Legislature.

The offense, according to the statute, is the failure for any three of five years preceding the act.

The taxes on such "third rate" lands in the early days were, as they should have been, extremely small. The tax of two shillings per 100 acres was reduced retrospectively (2 Litt. L. Ky., 55). In 1797 the tax on third rate lands was nine pence per 100 acres (1 Id., 653). In 1799 it was 12½ cents per 100 acres (1 Id., 316). In

1801 the tax on all lands was 15 cents for every $100 of
222 valuation (5 Litt. L. Ky., pp. 292, Sec. I.). In 1834 the rate was 10 cents on $100 of valuation (2 Moreh. & Br., p. 1389). In 1814 the whole revenue of the State required to be raised by taxation real and personal of all the property of the entire State was only $225,000 per annum (5 Litt. L. Ky., 111). These wild lands on the slopes and tops of hills unfit for agriculture and far from railroads were of little value until recent years when the advent of a railroad seemed to be imminent. So little was due the State for taxes that the State has relinquished claim to all lands purchased by the State for taxes assessed in or prior to 1879 (Ky. Stats., §4038); and the State now retains a lien for taxes for only five years, and even this lien does not exist against a purchaser (Id §4021; see infra, III. (4).). This, however, has not prevented the Legislature from making the payment of fifty years' taxes a condition of redeeming from the "forfeiture" under "Article III."

If there were any culpability or remissness on the part of these heirs, scattered all over the country and ostracized from any use of their lands, because of the violence of occupants, the punishment at the most should have been by an orderly assessment, and if still delinquent, by a sale of their interests, the surplus of the proceeds of their lands to be paid to them.

Another reason for the neglect of these lands by the true owners while the lands were of little value may perhaps, be found in the rigors of the "Occupying Claimant's Law."

In one case this law was enforced against the true owner of the land by awarding to the occupant not only all the true owner's
223 land possessed by the occupant, but also by sale of all his other lands and property and that of his surety with a judgment over for deficiency.

1827—Belshe v. Barrett, 21 Ky. (5 T. B. Mon.), 590.

(12.) Alleged (*a*) similar conditions in Virginia and West Virginia, and (*b*) alleged more stringent remedy in those States, and (*c*) alleged success of confiscation there.

After reviewing a part of the statutes and decisions of the courts of Kentucky bearing on the question, the opinion of the Court in the case now at bar proceeds as follows:

"It will be remembered that in Virginia there was substantially the same state of affairs as in parts of Kentucky, for that region lying between the Allegheny mountains and the borders of Kentucky was of the same character of land, and had been appropriated by the same methods and under the same system, and at or about the same time, as had the lands in Kentucky. Naturally, the same result ensued" (Opinion, p. 141).

This statement, it is submitted, is unfair, because it implies, what is afterwards expressly declared in the opinion, that the same conditions existed in Kentucky, when the Act of 1906 was enacted, as existed in Virginia, when the acts alleged by the Court to be similar thereto were enacted.

224 The Acts of Virginia and West Virginia were probably the consequence in part, at least, of the overlapping in whole

or in part of ancient patents and the difficulty of determining who was the true owner.

The Kentucky Act of 1906 is an attempt to vest title of wild lands in occupants who do not claim under an ancient patent of any kind but under recent bogus "patents" which are absolutely null and void, under the statutes and decisions of the Courts of Kentucky, as shown in Appellant's Brief (pp. 28, 29) and elsewhere in this argument.

Thereupon, the Court says:

"In 1790 the Commonwealth of Virginia enacted a statute (13 Henning's Statutes at Large, 116, Section 5), by which title to lands not tax-paid for three years were 'forfeited and vested in the Commonwealth.' The act was extended and re-enacted in increasing vigor in 1792, 1803 and 1810. In 1835 a still more drastic act was adopted (Hutchinson on Land Titles of Virginia and West Virginia, 62), the salient features of which are incorporated in the act of Kentucky now being investigated, except that in the Virginia Act there is no provision for an inquisition of office, or its equivalent, as there is in the Kentucky Statutes" (Opinion, p. 141).

This statement, it is submitted, is erroneous in several respects, the consequence, it would seem, of the reliance by the Court upon statements in the brief of counsel opposing the appellant who were allowed to be heard on the argument. (Brief for Appellee, §§28-29.)

225 The Virginia Act of 1790 did not attempt to forfeit any lands for failure to list for taxation, but only for failure for three years to pay taxes assessed. The earliest act proposing to forfeit for failure to list or enter on the books for taxation was the Virginia Act of February 5, 1810; but this act never became operative. Its operation was postponed by later acts till the Act of February 9, 1814, which repealed all laws proposing to forfeit lands for failure to enter them on the tax books and remitted all forfeitures for that cause.

Hutchinson Land Titles, pp. 5, 6 and 7.

Although this repeal and rescission is not generally stated in the decisions of the Virginia courts which review the statutory legislation of Virginia regarding forfeitures, it is clearly shown by referring to the Virginia Statutes, and, as already stated in appellant's brief (p. 63), the Court of Appeals of Virginia have expressly declared that

"prior to the passage of the law of 1835 providing for the entry of lands on the Commissioner's books and forfeiting all lands not so entered, there was no law in force declaring a forfeiture of such omitted lands."

1858, Hale vs. Marshall, 14 Gratt., 289.

"Under the Virginia statute of 1790 providing that a failure to pay taxes should forfeit the land before any forfeiture could occur the land must be assessed, listed, returned to the auditor of public accounts and advertised."

Kinney v. Beverly, 2 Hen. & M., Va., 318.

226 The Virginia Act of 1835 provided that grants from the State would be forfeited on July 1, 1836, unless entered before that time on the Commissioner's books and all arrears paid. By acts of March 23, 1836, March 30, 1837, and March 15, 1838, the time of redemption was in each case extended.

Bowman v. Dewing, 37 W. Va., 117 (16 S. E., 440).

The Statutory law to-day in Virginia seems to be as follows:

"Any person owning or claiming real estate in this State shall, if the same be not already there, cause it to be entered on the land books."

Va. Acts 1874, p. 386; now in
Va. Code (Pollard, 1904), Section 634.

"If such owner or claimant shall neglect to enter his real estate as provided by the preceding section for a period of five years after notice in writing by a commissioner authorized to assess the same, such real estate shall be absolutely forfeited to the Commonwealth and be liable to entry and survey as waste and unappropriated lands under Chapter 104."

Va. Acts 1874, p. 386, now in
Va. Code (Pollard, 1904), Section 635.

The last cited section in above cited edition of the Code has the following note, which would seem to indicate the position of the bar of Virginia:

227 "This statute is constitutional (Wild's Lessee v. Serpell, 10 Grat., 405). But see King vs. Mullins, 171 U. S., 404 (18 Sup. Ct., 925, 43 L. Ed., 214). For comments on same see 4 Va. Law Reg., 194, where it is observed that the reasoning in the last mentioned case would lead to the conclusion that this section is unconstitutional."

Va. Code (Pollard), 1904.

Leaving Virginia to consider West Virginia, the Court says:

"West Virginia was erected into a State in 1863. All of her territory was carved out of Old Virginia, and was wholly within the zone affected by the system of grants above discussed. In her Constitution is a provision in every feature or principle the same as the Kentucky Statute of 1906, except in the West Virginia Constitution there is not a provision for a trial in court concerning the proposed forfeiture (Article 13, sections 1-6, W. Va. Constitution)."

Opinion, p. 141.

This, it is submitted, is all wrong. The Court must have been misled in this, as in various other points, by the statements of opposing counsel, who were allowed to step into the shoes of the Commonwealth to oppose the appellant. (Brief for Appellee, p. 28.) The Court could not have had before it a copy of the Constitution of West Virginia.

228 West Virginia, (instead of seeking, like the Legislature of Kentucky, or rather, like the real promoters of Article III., to forfeit for delinquencies prior to the enactment of the law), by its first Constitution extended for five years the owner's time to

list his lands, during which five years no acts to forfeit lands were allowed (W. Va. Const., 1864), and in 1869, at the expiration of such five years, the Legislature granted still one more year (W. Va. Acts 1869, pp. 88, 90, Ch. 125, Section 7), and in 1871 extended time for redemption, subject to rights meanwhile acquired, two years from the passage of that act (W. Va. Acts 1871, p. 183, Ch. 138); and by the Constitution of 1872 made the condition of forfeiture that the owner of a tract of over one thousand acres should have failed to charge the land on the land books for five successive years after the year 1869 (W. Va. Const., Art. 13, §6; W. Va. Code 1906, Art. 13, §6, p. ixxxv.).

"He (the owner) was given more than two years substantially from the date of its adoption by the people to perform this constitutional requirement; for it gave him five years from and after the year 1869 to do so, which was equivalent to two years from and after the year 1872."

U. S. Circ. Ct. W. Va., 1907, Fay vs. Crozer, 156 Fed., 486.

Besides all this, the West Virginia Constitution (instead of the brutal disregard of the rights of infants, married women and the insane, displayed in the Kentucky Act of 1906), provided for a period of grace of three years after removal of disability for
229 all those laboring under such disabilities, which right to redeem might extend to twenty years from the time the land was forfeited.

West Va. Const., 1827, Art. 13, § 6; W. Va. Code, 1906, Art. 13, §6.

Still more:

The West Virginia statutes now in force (instead of confiscating everything in sight like the Kentucky Act of 1906), provide for a repayment to the owner of the surplus on the sale of lands forfeited to the State.

W. Va. Const., 1872, Art. 13, §5; West Va. Code, Anno., 1906, §901.

The Court, in the case at bar, after citing a number of decisions of the West Virginia Courts, refers to the case of King vs. Mullins (171 U. S., 404), and after summarizing some of the statements of the opinion in that case, concludes as follows:

"But the Court did say, as being all that was necessary to a decision of the case in hand, that inasmuch as there was a provision in the statute of West Virginia by which the lands forfeited under the Constitution of that State were sold under a decree of a court, in an action to which the former owner was made a party, and in which he was allowed to redeem on certain contingencies, it was in every sense a sufficient compliance with the requirement that the owner be given a day in which to contest the proposed forfeiture. The West Virginia provision was therefore upheld" (Opinion, p. 142).

230 This is all that was decided by the Supreme Court of the United States regarding the Constitution and Statutes of West Virginia on this subject. The decision from the words of the opinion of the Supreme Court seems to have been made with reluctance, and

is expressly stated to be confined to the question raised regarding the Constitution and Statutes then before the Court. It was, moreover, confined to the question, whether the owner was given a sufficient "day in court," or its equivalent, to constitute "due process of law," so far as a provision for day in court was concerned. None of the other grave constitutional questions under the "due process" clause and other clauses of the Federal Constitution to which the West Virginia laws on this subject may be obnoxious, were raised. But it seems to be safe to say that the future litigation in West Virginia cases regarding these provi-ons holds various other constitutional questions in store.

There is not a word in the opinion of the Supreme Court in King vs. Mullins that would justify or excuse the infractions of the "due process" clause in *to*her respects or the many other clauses of the Federal Constitution and of the Constitution of Kentucky, set forth in the appellant's brief.

Summing up its conclusions on this point, the Court says:

"Thus we see that * * * similar conditions produced by the same cause had existed in two of our sister States; that they had gone further than Kentucky had in an attempt to relieve the situation, and that their efforts had been successful and were without legal exception" (Opinion, pp. 141-142).

231 Summing up in answer, the appellant submits that all the parts of this conclusion are wrong.

(*a.*) That the statement "similar conditions had existed" (in Virginia and West Virginia) is unfair because the objects and purposes of the long-established legislation of Virginia and West Virginia, on the one hand, and of the novel attempt of Kentucky on the other are not the same; that not merely the conditions sought to be affected by the legislation are not the same, but the long established statutes of Kentucky subrogating occupants and lienors to the Commonwealth's claim against the true owner for taxes, would render unconstitutional in Kentucky some legislation that might not be so in West Virginia or Virginia.

(*b.*) That the statement of the Court "they (Virginia and West Virginia) had gone further than Kentucky had in an attempt to relieve the situation" seems to be misleading, because a not very attentive reader might be led to conclude that the Acts of Virginia and West Virginia "had gone further" than the Kentucky Act of 1906, whereas neither the legislation of Virginia or West Virginia nor probably of any other State or country of the world has shown anything approaching a precedent for the atrocities of Article III. of the Kentucky Act of 1906 (Appellant's Brief, p. 117).

(*c.*) That the statement "their effor*t* were successful and without legal exception" is without foundation.

The reference of the Court to the legislation of West Virginia as a cure for the evils recited seems to be most unfortunate. So
232 far from curing the evils complained of, it has opened a Pandora's box of litigation on these questions the end of which no man can see. One of West Virginia's most eminent lawyers within the last thirty days, when asked whether this legislation had

removed the trouble, replied, "By no means; the trouble has just begun." As counsel are advised, upon inquiry, the profession in West Virginia has so great distrust of the soundness of this legislation, that in most cases where the title has been quieted and development begun, it has been by the union of the Elder and Junior Grants.

II.—The Court's Conclusion.—"There can be no doubt that the Legislature intended to outlaw these dormant titles."

The Court summarizes its conclusions as follows:

"Thus we see that in 1906 the Legislature was confronted with this situation: Every evil that had existed from the beginning threatening the stability of the land titles of a large and important section of the State, was still unalleviated; that every legislative measure adopted during the past 115 years had been unavailing; that in spite of their public duty, and of the imperative command of the law and needs of the State, these claimants refused to respond, and were beyond the reach of the law then in existence; that the reasons of the failure of the previous legislation upon the subject were those constitutional obstacles which had been pointed out in various
233 opinions of this Court and of the Supreme Court of the United States; that similar conditions produced by the same cause had existed in two of our sister States; that they had gone further than Kentucky had in an attempt to relieve the situation, and that their efforts had been successful, and were without legal exception. The idea was not new to the Legislature that the duty of the Commonwealth was to protect herself from a continuation of that thrall that was paralyzing the energies of a large section of the State, disturbing its peace and robbing the State treasury of its revenues. Thereupon Article 3 of the Act of 1906 was most deliberately adopted. The revenue laws of Kentucky, in the opinion of the previous Legislature, needed radical revision. A commission was raised to study the question, to hear complaints and suggestions, and to bring in at the next session a new bill covering the entire subject. Two years were allowed for the work. The committee did as directed. The whole system of the State's revenue laws was revised, and an entirely new, complete measure introduced and enacted (Acts 1906, pp. 88 to 248). Article 3, as quoted above was in this deliberate manner proposed and adopted. There can be no doubt that the Legislature determined to outlaw these dormant titles, and thereby protect the treasury, and increase the State's revenues. Nor can there be doubt that the legislative purpose was to proceed carefully and in that manner that would satisfy the requirements of the Constitutions of this State and of the United States. The
234 Legislature did not intend to deal tenderly with a situation that had been aggravating in its merits; it realized that sometimes sternness is justice, and further leniency injustice. The Legislature has squarely faced the problems of the situation. The court has no disposition to look at it otherwise than it is—to pass upon the questions of law presented, grim and bare as they may be" (Opinion, p. 142).

And somewhat farther on in the opinion in concluding a discussion of the "Police Power," the Court says:

"The primary purpose of article 3 is to raise revenue. Its incidental purpose is to regulate other rights. Also incident is the disposal of that which, in default of the revenue sought, shall come to the State by way of penalties. As they will in such event belong to the State, to dispose of them in that way that will most redound to the public welfare as the Legislature shall judge, is a logical continuation of the same general subject of legislation. That the Legislature has the power to so dispose of what may be forfeited to it, we have no manner of doubt, nor has there been cited to us any case, or advanced any reason, to the contrary."

Opinion, p. 146.

If these two parts of the Opinion are to be reconciled it would seem it must be by construing the Court's conclusion to mean that the Legislature's intention in Article III. was to raise revenue by "outlawing" (i. e., confiscating without compensation) the
235 titles of the true owners, and that the expression to "regulate other rights" means, to deprive the existing owners of the title to certain lands and transfer a part or all of them to others, who have, it is said, a "moral right" thereto. Whether this "regulation of rights" is supposed by the Court to be permissible as an exercise of the "police power" is not very clear, although the place in which it is stated in the Opinion, immediately following a reference to the police power, may indicate such a conclusion. The constitutional impossibility and the iniquity of such an attempted exercise of "police power" will be elsewhere shown in this argument (§III. (5,) infra). We are concerned here merely with the fact that the Court concludes that the Legislature intended to "outlaw" dormant titles, and thereby "regulate rights" through the form of a revenue act.

It would seem also, from the Opinion, to be the Court's conclusion that the purpose of the Revenue Act was not to raise revenue by collecting arrears of taxes and future taxes from the true owners, but by appropriating their title (without compensation) and disposing of such titles to others who would hereafter pay taxes thereon, settle and develop the land, &c., and do all else that the Court finds that the true owners of the land have grievously failed to do.

Although Article III. in its provisions for forfeiture is in any event (it is submitted) void under the Constitution of the United States, because it violates almost every one of the most important prohibitions of that Constitution, it seems that the Ultimate Tribunal, to which appeal must in last resort be made, should be informed whether the Court of Appeals of Kentucky con-
236 strues the intention of the Legislature to have been to raise revenue by collecting arrears and future taxes from the owners of the land, if possible, and to resort to attempted forfeiture only in the event that after patient attempts under this statute, to collect such taxes this was found to be impossible, or whether the intention was (as the opinion of the Court as it now stands would seem to conclude) to raise revenue from the owner's lands by for-

feiting them, if by any means possible, in order to raise revenue from others upon whom the Commonwealth should bestow the lands.

This question seems to be important also in judging the acts of the local courts in their treatment of the appellant in its attempts to list these lands (hereinafter considered, infra, IV.), and in the suits now pending in those courts, attempting to forfeit the appellant's lands, in order to determine whether the Legislature was originally responsible for all the atrocities in the conception of the Act, or whether the Judiciary have added some of their very own in its interpretation and execution.

That the primary purpose of the act was not the raising of revenue by taxing the true owners, but was the forfeiting of the titles to be rid of the "incubus" (Opinion p. 141), seems, indeed, to be shown by the shortness of time allowed for complying with its provisions, the still shorter time allowed for redeeming, and the extraordinary conditions for such redemption, which spare not infants, or married women, or the insane, and the provisions which seem to seek to extend the operations of the act even to those who, like the appellant, purchased lands in good faith after the last of the years of alleged delinquency in listing and prior to the enactment. The courts would seem to be endeavoring to effect such a supposed intention of the Legislature by declaring appellant's petitions to list to be defective, without pointing out alleged
237 defects or permitting an opportunity to amend them to comply with the conditions imposed by the Court, a permission which would have been merely in accordance with common fairness, and the custom everywhere of courts of justice.

But the intentions of a Legislature, where the purpose is not clearly shown by the letter of the Act, are not to be sought in the construction placed on an Act by those who may execute its provisions, nor can such intention be always found by examining, as the Court does, the supposed evils to be remedied. The character of the remedy, as related to the supposed evils, is also a proper subject of consideration in attempting to determine whether the Legislature, which must be presumed to be a moral body, could have intended to adopt such a remedy.

According to Noah Webster's Dictionary (citing Blackstone), "to outlaw" means "To deprive of the benefit and protection of the law; to proscribe," which definition, while it shows the accuracy of the Court's expression, makes still more glaring the atrocity of the alleged legislative purpose.

Can it be true that the intention of the Legislature was, as the Court says it was, to deprive the appellant's titles of the benefit and protection of the law and to proscribe these titles, such an intention being based on the alleged grievances hereinabove reviewed, the numerous counts of which indictment, whether taken severally or altogether, bring to mind (with due respect to the office of the Court be it spoken) the story of the fabled wolf, who, being well advised of the strategic advantages of an attitude which imports that
238 "sternness is justice, and further leniency is injustice" (Opinion, p. 143), as a formal preliminary to "outlawing" and con-

fiscating the lamb and appurtenances, indicted the said lamb for drinking from the stream below the said wolf?

There seems to counsel for appellant (again with due respect be it said) something comic in a legislative attitude of "sternness" adopted towards owners who are deprived of the use of their property by the murderous threats of trespassers, unrestrained by the "police power" of the Commonwealth, and when these owners, if they could in any event recover their lands, would be required by the laws of Kentucky to pay again to the occupant the amount of taxes which, it seems, they are expected to pay also to the Commonwealth or else, (which it seems the legislature would much prefer) submit to the "outlawing" of their titles.

The appellant prefers to believe that the Legislature, instead of having had the intention attributed to it by the Court, may have been misled in its action by false information and tricky persuasion, and that the Court, being mistaken respecting the real intention of the Legislature, may be consequently mistaken in the construction of the Act, unlawful as such Act seems to be in its application, however it be construed.

To have had such an intention, as the Court seems to attribute, the Legislature must have proceeded from the premises stated by the Court, which, as already shown (supra, I (1) to (12)), were not justified by the facts, and thence formed an intention which (as already and hereinafter shown), no matter what the facts, is not permitted by the law.

239 Even if the Court's conclusions as to the facts were true, it is submitted that the Court's conclusion as to the legislative intention is not justified. In addition to the reasons already stated showing (it is submitted) that the Legislature could not lawfully have had the intention attributed to it by the Court, there are other reasons for doubting that conclusion.

According to the Court, the Legislature intended to increase the revenues by "outlawing" the title of the true owners of the land. The enemies of the appellant who were the promoters of Article III, undoubtedly had the latter part of the intention. But if, as the Court concludes, the Legislature also had such an intention, then Article III, must be a hypocritical document, for it pretends to aim to increase the revenue by collecting taxes directly from the true owners, without regard to whether it has already collected full taxes from adverse occupants; and this method of collecting twice the full amount of the tax on the same land valued in each case at its "full cash value," would increase the revenue to a much greater extent than the plan for forfeiture preferred by the enemies of the appellant, who are already (somewhat prematurely) congratulating themselves *upon* having thereby obtained the lands of the true owners, as a gracious gift from the Commonwealth.

The appellant submits that the reasons on which the Court bases its judgment have no existence whatever in fact as touching the appellant, even if it be assumed, as the Court does, that Article III, of the Act of March 15, 1906, was a desperate remedy for a desperate

situation, and even if there be also admitted without qualifi-
240 cation the faithfulness to life of the dark picture painted by the Court (supra);—conditions deemed sufficiently aggravating to provoke the Court to reverse its settled opinions of over a century's growth and place its seal of approval upon this agrarian legislation, not only spoliative and confiscatory, but utterly revolutionary and subversive of all settled, constitutional government. Of this policy professional propriety forbids that we should express fully our candid opinion. But it is a part of our duty, as officers of this Court, to point out to the Court, wherein it is believed to have fallen into error of law and fact in the application of these theories so novel to the administration of justice in Kentucky.

As a matter of fact, the appellant is not chargeable with any of these supposed sins of omission or commission, recited in the opinion. The picture drawn by the Court is not a likeness of the appellant. Its innocence of any of these charges will appear from a simple recital of the facts.

Paragraph I. of the petition filed in the County Court recites that:

"Your petitioner is a corporation created under the laws of the Commonwealth of Virginia and authorized under its said corporate name to purchase, acquire and hold lands and titles, claims and interests in, upon or affecting lands and appurtenances thereto situated in, all or any of the States of Kentucky, Virginia and West Virginia, and to do whatever may be deemed expedient to protect and enforce said title, claims and interests, and if
241 it be deemed expedient, to improve and develop said lands or any parts thereof, or interests therein by mining operations or otherwise and to sell and convey, mortgage, lease or otherwise dispose of any or all such lands, titles, claims and interests aforesaid, or parts thereof at one time or from time to time as may be deemed expedient."

Paragraph III. of the said petition recites that:

"Your petitioner claims said tracts of land respectively under the grants stated respectively in the foregoing descriptions of said tracts; and the instruments through which title to each of said tracts devolved upon your petitioner are deeds from Charles B. Hillhouse, grantor to your petitioner, grantee, dated respectively the 21st and 24th day of December, 1906, not yet recorded, conveying all the right, title and interest of said Charles B. Hillhouse, in and to each of said tracts of land respectively, the titles of said Hillhouse having been derived by deeds and contracts to convey to him by others claiming by inheritance, devise or mesne conveyance from those to whom said tracts of land respectively were granted as aforesaid by the Letters Patent above described respectively."

Nobody, at any time, has ever been heard to question or deny these allegations.

They are true.

We quote from appellant's brief, pages 125, 126, 127, as follows:

242 "It has been hoped such litigation may be avoided by uniting under the same ownership the occupant's claim of

title and the title of the Eastern Kentucky Coal Lands Corporation under the Virginia Grants.

"It has seemed, therefore, to the stockholders, directors and counsel of the appellant herein, the Eastern Kentucky Coal Lands Corporation, that to consolidate in the ownership of that corporation so far as practicable, the titles of all those who have derived title by inheritance or otherwise, from the patentees of the tracts described in the appellant's petition to list, would not only be the best means of protecting the interests of those entitled under such ancient patents, but would be a public benefit in aiding towards an amicable settlement between the claimants under such ancient patents and such of those claiming title by adverse possession as should be willing to do their part towards a fair and amicable settlement.

"In pursuance of this purpose several hundred of those claiming by inheritance, devise or deed the title to the lands under these ancient patents have become stockholders in the corporation appellant herein, and conveyed their titles in exchange for stock of that corporation.

"Probably all, and certainly the overwhelming majority in interest of such stockholders, and all their representatives, the directors and counsel of that corporation, recognize and admit that title by adverse possession has been acquired by settlers to
243 parts of the lands in question, and that even where such title has not matured, all settlers have equities not merely for the value of their improvements, but also by reason of their cultivation of the land, payment of taxes, &c. In fact, it is believed that there would be no difficulty in reaching an amicable settlement of the titles and adverse claims of title to almost all the land described in the appellant's petition to list, except for the bitter opposition of certain other corporations whose promoters have acquired deeds from occupants for several hundred thousand acres of mineral rights in this locality. It is these other corporations and their promoters, who, in a desperate attempt to bolster up their claims procured the enactment of the Act of February 26, 1906, 'relating to the possession of land and interests therein where there has been or may be a severance of the mineral or other interests from the surface' in which is manifested so tender a regard for 'the holder of said mineral interests and rights' (Acts 1906, Ch. 7, p. 19), as to declare that the grantor after conveying his mineral interests 'shall be deemed to have been in possession of such mineral interests * * * for the benefit of' the grantee, altho' in law, in fact, and in truth, the grantor was not in possession of anything but the surface. It is these same other corporations or their promoters that secured the enactment of Article III of the Revenue Act that manifests such haste, harshness and hunger for an attempted forfeiture of the title of the true owners, with a ruthless and
244 brutal disregard, even of the interests of married women, and children, a period of redemption of hitherto unheard of brevity under conditions of hitherto unheard of severity in order that the title of the true owner, (not even shall be, but) 'is hereby

transferred to and vested in any person * * * who has had the actual adverse possession for five years next preceding the judgment of forfeiture under claim or color of title, derived from any source whatever, and who * * * shall have paid taxes thereupon for five years * * * and in those in privity with such person * * * as to the mineral or other interests appurtenant to such land.'"

So that the very creation of the appellant was inspired by a realization of the difficulties in the situation described by the Court, and long prior to such incorporation those who became such incorporators after a careful examination of the decisions of the Court of Appeals relating to junior claims under void so-called "patents," and relying upon such decisions formed and followed a resolute determination to apply patiently a legal, constitutional remedy, which should violate the rights of no man, respect the claims of everybody and unite everybody with an interest, in a combined effort to build an enduring structure on a sure foundation.

The first stage of this program had been accomplished at a great expense of money, and when on the 21st and 24th of December, 1906, Charles B. Hillhouse conveyed to appellant the titles of heirs of these patentees, several hundred in number, gathered from the four corners of the earth.

245 The appellant obtained title on the 21st and 24th of December, 1906.

It filed its petition to list in Floyd and Pike Counties on December 27, 1906, in Knott County on December 29, 1906, and in Letcher County on December 31, 1906.

At the hearing in the four counties on the 14th, 15th, 16th and 17th days of January, 1907, successively, the appellant offered in open Court to pay taxes at the rate of $1 per acre on the total acreage of its grants, which would pay

In Pike County	$30,652 93
In Floyd County	8,931 40
In Knott County	2,937 92
In Letcher County	5,570 53

Pp. 48 to 53 of Appellant's Brief.

The lands of the appellant are only a fraction of the land in these four counties.

The total revenues of the four counties for the years 1901, 1902, 1903, 1904 and 1905 were:

Pike County:		Floyd County:	
For 1901	$10,977 34	For 1901	$6,371 23
" 1902	10,924 59	" 1902	6,677 12
" 1903	17,215 45	" 1903	7,432 78
" 1904	18,738 23	" 1904	8,692 01
" 1905	19,185 71	" 1905	9,709 25

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Knott County:		Letcher County:	
For 1901.....	$3,956 11	For 1901.....	$4,689 70
" 1902.....	3,908 72	" 1902.....	5,156 11
" 1903.....	4,429 40	" 1903.....	6,360 41
" 1904.....	6,058 87	" 1904.....	7,795 28
" 1905.....	6,152 85	" 1905.....	7,787 78

(See Auditor's Reports for 1901, 1902, 1903, 1904, 1905.)

And these amounts for the four Counties include the taxes paid by the Northern Coal & Coke Company, in each and all of the four Counties for those years on the two hundred thousand acres of mineral underlying appellant's lands claimed by it.

If the Legislature of 1904 began a movement in the appointment of its Commission to remedy these evils, its effort was antedated several years, by the subsequent incorporators of appellant, who had inaugurated the movement to bring order out of confusion not by legislative panaceas, astringents or poisons, but by a faithful, thorough, honest and intelligent observance and application of fundamental legal principles as they have existed from the foundation of the Government.

If it had been determined by the Legislature of 1906 to "outlaw" these titles, then the law pointed out a way. That way was not by confiscation under the guise of taxation.

The legal way, the honest way, if these lands were needed by the State, would have been by the exercise of the Commonwealth's power of eminent domain, to condemn the title, as any other property wanted for a public purpose and pay the owners the value thereof.

247 In the Opinion herein the principles of law applicable to condemnation of lands under the power of eminent domain seems to have been confused with the law of taxation. If the state of case set out by the Court existed and impressed the Legislature with the imperative necessity to "outlaw" these titles, the true titles, then the Legislature embarking upon this buccaneering expedition should be held to the law of the black flag.

Under that flag they should not be permitted to pull it down on the high seas and hoist to the mast the milk white flag of honest and sincere taxation. And when one has entered upon this business to "outlaw" his enemy, it may or may not succeed, in a condition where society is unorganized and impartial courts and tribunals are unknown.

In a state of organized society, the courts are established for the express purpose of staying the hand of private and personal greed, which would "outlaw" lawful enterprise, protected by the most sacred guarantees and pledges given among men.

Legislatures, in times of stress, moved by popular clamor, have been known, even here in Kentucky, to ignore and disregard the sacred obligations of their own Constitution and the Constitution of the United States. In one signal instance, this Court, in the cases of Blair vs. Williams and Lapsley vs. Breshears, by its calm, steady adherence to fundamental, constitutional principles, in the face of

opposition so violent as to threaten the disruption of the Government, added new lustre to the American bench and fixed
248 firmly in the hearts of men the abiding conviction that the law was a shield and not the staff of a broken reed "whereon if a man lean it will go into his hand and pierce it."

But as a matter of fact the tax Commission had no thought to "outlaw" such a title as that presented by appellant. The idea of that commission, perfectly consistent with governmental policy, was to raise revenue.

Let the Commission speak for itself. In its report to the Kentucky Senate on January 3, 1906, referring to this subject the Commission says:

"We recommend to the careful and we know favorable consideration of the General Assembly an amendment to the present assessment laws that will be a great revenue producer, and at the same time do more to rid the eastern part of the State of those old land grants than any other measure. This amendment will not affect the titles to the central and western portions of the State because old land grants in those sections do not affect or destroy the present titles to land, but it will cause the owners of real estate in all sections of the State to assess it and pay the tax on it, and for that reason the amendment will be a large revenue producer."

Article III. of the Act of March 15, 1906, was not the fruit of the labors of the Legislative Commission, but the trap built by the Northern Coal and Coke Company to ensnare and destroy the true title, and thus rivet its hold upon the minerals it had bought
249 for "a pittance" from junior patentees, who had paid five cents an acre for county court orders located and surveyed on top of the Virginia Grants. Grants for which the patentees of more than 400,000 acres had paid into the Treasury of Virginia, over 640,000 pounds current money, then equal to $2,000,000, when the Mother State was borrowing money at usurious rates to prosecute her struggle for independence. This immense sum the opinion refers to as "the pittance paid into the Treasury for warrants."

The only counsel who appeared for appellee before this Court, save the Attorney General, were the counsel of the Northern Coal and Coke Company. The Attorney General, the only representative of the Commonwealth, filed a brief in which he urged the views presented by appellant, insisting that the whole of Article III. was repugnant to both the Constitution of Kentucky and the Constitution of the United States, and therefore void.

The residents and citizens of the territory are not making the fight against Appellant. In the County Court, in the Circuit Court, in this Court, the Northern Coal and Coke Company and its allies have been and are the real parties in interest.

The reasons are obvious. From 1899 to 1908 the Northern Coal and Coke Company has held this whole territory in "thrall." It has not opened a mine or mined or shipped a ton of coal or spent a dollar in development of the country. Its business has been and is purely speculative—to buy the minerals at the lowest price from the citizens, and market them at the highest price to capitalists as

property having a good title. Its frantic opposition to the Appellant's simple effort to have its own, is not to be wondered at.

250 In the whole history of the litigation, from the County Court to this Court, no other than the representatives of the Northern Coal and Coke Company have appeared as the champions or apologists of this buccaneering Article.

In the Legislature of 1906, most determined opposition was presented by the ablest and most virtuous members of that body to the scheme to foist Article III. on the Revenue Act. That Article was passed under pressure from the Northern Coal and Coke Company and even at that secured with difficulty the votes required to pass it (see Journals of the House and Senate, 1906).

That sinister influences were at work in the Legislature at the Session of 1906, in and about this Revenue Act, we know from the highest source possible.

In his message of March 13, 1906, convening the Legislature in Extra Session, His Excellency the Governor of the Commonwealth says:

"I regret the necessity of this call, but my reasons for this are so apparent to every member of the General Assembly that it is hardly necessary to explain. You have just passed through a long and bitter contest over the passage of a revenue bill and in that struggle the great mass of the people, whose servants we are, have not received all to which they are justly entitled. In the Revenue Bill you have just passed in your regular Session, this one question has been the stumbling block and has well nigh defeated all sensible and reasonable fiscal legislation. A powerful interest, present with

251 its astute and capable representatives, has been able for a week or more to block all legislation upon the important question of your Revenue affairs, and as Chief Executive I give you this opportunity to determine whether or not this industry shall bear its just proportion of the burden of taxation."

The special reference here is to the tax on rectified spirits.

Nor is there any confusion or overlapping of the appellant's grants. In many parts of the State there is confusion in the location of the Virginia and early Kentucky grants. But not so with these first grants made on this territory. They are definitely and certainly located by calls for fixed, indestructible, natural objects and chain on to each other. This fact is well known to the Northern Coal and Coke Company, which has surveyed out more than one of them for the purpose of taking shelter under them (as an outstanding title in strangers) in litigation in the Federal Courts against their interest by antagonists also holding under Junior Grants.

The confusion is not in uncertainty of the location of Appellant's Grants, but in the placing over them, haphazard, recent surveyors on County Court orders which this Court holds absolutely void. A decision by this Court holding Article III. to be void would wipe off the map much of the uncertainty now existing, and open a plain, broad highway to progress and development, whereon all might walk with the utmost confidence and safety.

It is respectfully submitted that all that is said by the Court re-

garding the early complexities of the land laws, the over-
252 lapping of ancient patents, the hardships and ignorance of the early pioneers, &c. (Opinion, p. 138), is irrelevant to the determination of the case at bar.

From these facts it seems that the Court has deduced its conclusion that the occupants referred to in Article III. of the Act of 1906 were "innocent enough," &c. (p. 138) and hence had a "moral right," &c. (p. 139). But the premises do not support the conclusion, because the occupants in question are not claimants under any patents of Virginia or Kentucky. If they were they would not need a confiscation of the early titles in their favor, but would be protected under the doctrine of color of title extending construction under the ancient junior patents to the extent of the patent boundaries and over the "lap," if the senior patentee is not in actual possession within the limits of his patent. There are occupants of this character in the "bottoms" and many others also who without any real patent from either Virginia or Kentucky have acquired by adverse possession to the extent of their enclosure or cultivated fields. But the controversy here is whether, in addition to the lands thus lost to the true owners, occupants shall be able by Article III. to acquire title to all the remaining lands under claim of so-called titled from so-called "patents" issued by Kentucky officials purporting to be under the Act of Kentucky of 1835, and its revisions, which expressly prohibit such issue and declare the same to be "absolutely null and void" where the land had been previously appropriated.

These bogus "patents" the Court of Appeals has held are not
253 real patents, do not give color of title and are no better than blank paper.

None of the land claimed by the appellant has ever been really granted by the State of Kentucky to any occupant. In most cases there is not and never has been any actual occupation of such land, and none of it has been cultivated or even "cleared," unless by despoiling it of timber, not to prepare the land for agriculture but to appropriate the proceeds of the timber. The appellant is ready to recognize the moral rights of settlers. As already stated, the appellant's purpose is not extrusion but an amicable merger of conflicting interests as a preliminary to development of this territory.

None but the enemies of the appellant who have stepped into the shoes of the Commonwealth in this litigation, and their dupes, seem to be opposed to this purpose of the appellant.

The purpose of the Legislature of 1906 in inserting Article III. as part of the Revenue Bill was "to cause the owners of 'Real Estate in all sections of the State to assess it and pay taxes on it, for that reason the amendment will be a large revenue producer.'"

The appellant, within a week after it acquired title, listed its land for taxation in each of the four counties, and in less than thirty days after it acquired title offered to pay taxes in each county amounting in the aggregate to more than the whole revenue from the four counties for 1905. The total revenue paid by Pike, Floyd, Knott and Letcher in 1905 was $42,835.59. The taxes offered by appellant, $48,092.78.

254 The Opinion states that "there can be no doubt that the Legislature determined to outlaw these dormant titles."

The Commission says that the intention was to pass "revenue measures providing a forfeiture of all lands to the State where no owner or claimant could be found to pay tax on it."

The appellant had rescued the "dormant" title of hundreds of poor heirs, unable singly to help themselves, and, in the language and spirit of the Commission, made them "large revenue producers;" "where no owner or claimant could be found to pay tax" for a hundred years the appellant, at its own expense, "found" them at great labor and cost and bound them together in an organization ready and willing to be "a great revenue producer;" to take a large "part in the development of the section where these lands lie" and to "add to the State's strength and stability in peace and in war;" to contribute whatever was necessary "to clearing the lands for settlement;" "to tenant them;" "to work them;" to render to the government "every consideration which entered into the Grant by the State;" to people these lands with virtuous, honest and thrifty "homesteaders tied by interest and patriotism to the State's welfare."

The expression used by the Commission "providing a forfeiture of all lands to the State where no owner or claimant could be found to pay the tax on it"—is extremely significant and instructive.

The objects to which the Commission should address its attention are stated in the resolution creating it in these words:

255 "Resolved, that with a view of securing a more equitable, economical and efficient system of levying, assessing and collecting the revenue of this State, the President of the Senate is hereby directed to appoint a commission of five senators, whose duty it shall be to carry out the purposes and provisions of this resolution. It shall be the duty of said commission to consider the extent and character of the taxable wealth of the State and the relative share of the burden of taxation borne by each class or kind of property; also the relative merits or equity of ad valoren, license and franchise taxes and the extent each may be increased or diminished without impairing the progress and development of the State, or discriminating in the burdens of taxation.

"It shall further be the duty of such commissioners to consider methods of assessing and collecting revenues of the State, and with this in view they are directed to compare the systems in use in other States, and obtain such other information as they may find, and recommend in their report what they deem the best system in order to secure economy and equity in assessment and economy and efficiency in the collection of the revenue."

The history of the development of this idea in the minds of the Commission is as follows.

The Commission as provided in the resolution held meetings in different parts of the State. It recites this in its report in these words:

256 "It has been one of the most gratifying and encouragnig incidents to our arduous and oftentimes seemingly impossible tasks that many of our able and patriotic citizens, from all

stations and pursuits of life, have given freely of their time and thought to help us in our work. These meetings, beginning in Louisville, were held in cities and towns in the portions of the State differing, as far as may be, in resources, occupations and taxable interest, to wit: Louisville, Owensboro, Owenton, Ashland, Winchester, Frankfort, Shelbyville and Lexington. The city farthest west visited by the commission was Owensboro, and a meeting of several days' duration was held in Ashland. Many able citizens, conversant with the intricacies of our revenue law and exponents of the development and progress of Kentucky, submitted both oral addresses and carefully prepared papers in elucidation of their views on the subjects we have considered, and while in many instances we are prevented from recommending their suggestions in the bill we shall offer, we are indebted to them for helpful information, and have, as we trust, reflected their spirit of fairness, alike to government and taxpayer, in said bill."

At this "meeting of several days' duration in Ashland" the Northern Coal and Coke Company, with an ever present and disturbing consciousness of the insecure foundation on which its titles rested, were "present with its astute and capable representatives."

257 It was from these "astute and capable representatives" that the commission learned that there was land in Eastern Kentucky held by titles "where no owner or claimant could be found to pay tax on it."

This was the idea injected into the minds of the Commission by the "astute and capable representatives" of the Northern Coal and Coke Company. The seed fell into productive soil. The Commission were seeking "revenue producers." The argument was that if the owner of the title could not be "found," then his title should be forfeited to some who could pay the tax.

At this "meeting of several days' duration in Ashland" it had never occurred to the "astute and capable representatives" of the Northern Coal and Coke Company, that enough of these impoverished heirs of these founders of the Commonwealth could be "found" to make any trouble. The idea that they would offer to pay taxes for five years or one year was so far improbable that it never occurred to these "astute and capable representatives" to provide for such a contingency.

The Article itself was drawn by Zachary Taylor Vinson, Esq., of Huntington, W. Va., one of the counsel of the Northern Coal and Coke Company, upon the theory thus presented to the commission, that it was a "revenue producer," not a title killer.

The act itself bears evidence on its face that forfeitures were only contemplated in cases "where no owner or claimant could be found to pay the tax on it."

But to the chagrin of the conspirators, heirs, united in a company, did appear; they did petition to list the lands for assessment; they did offer to pay five years' taxes.

258 What warrant, therefore, in any event, for forfeiture of the title to his property, with the owner "found," present, with the money in his hand, asking to pay all taxes demanded by the Act?

And the amounts which appellant offered to pay were a pure bonus to the counties, for others have been paying taxes on all or nearly all these lands.

In attempting to defend an Act so soaked in hypocrisy as is Article III, even the "astute counsel" for its promoters cannot avoid falling into a bog of inconsistencies and contradictions. For although they seem to have led the Court into an attempt to defend this Article III. as a measure "to raise revenue," they are forced to assert elsewhere for another purpose that there was no land in either county upon which some occupant had not paid taxes for the years named (Brief for Appellee, p. 62).

This may be to a large extent true, except in so far as it may imply that the "occupants" who paid occupied all the land on which they paid taxes. The same counsel, a little later, say:

"It is well known that there is not a foot of land in Floyd and Pike counties but what somebody has paid taxes thereupon."

Brief for Appellee, p. 66.

III.—The Court's Rulings Sustained the Constitutionality of Article III of the Kentucky Revenue Act of 1906.

Counsel for appellant ask now the indulgence of the Court to permit a brief review of the parts of the opinion which seek
259 to dispose of the appellant's objections to "Article III.," on the ground that the article is a flagrant violation of many peremptory prohibitions of the Constitution of the United States, as well as of the Constitution of Kentucky.

Before doing so, it may be well to notice here an objection of the appellee, or rather of counsel of the promoters of Article III., who were heard by the Court in support of that Article:

These counsel have objected that "the appellant became a voluntary participant in judicial proceedings, which, by fair inference, acknowledged the validity of the statute in question, and is, therefore, precluded from attacking it as unconstitutional" (Brief for Appellee, p. 58). This objection indicates to what straits the promoters of Article III. may be ultimately driven in their attempts to effect their purpose. The statement is not even consistent with the statement previously made by the same counsel, for another purpose, in another part of the same brief, viz., that the appellant "seeking the benefits of Article III., but denying its constitutionality filed its petition in the Pike County Court."

Brief for Appellee, p. 8.

The objection seems to have been already overruled by the Court, in ruling that
260 "The constitutionality of the act is questioned by appellant. The question must be decided, as, if it is unconstitutional, appellant would have had the right to list its lands under other provisions of law relating to the assessment of omitted property."

Opinion, p. 144.

The Court, therefore, seems to be in no need of authorities to show that an objection to the constitutionality of a law is not waived by complying, or offering to comply, with some of its provisions in order to avoid some of the injury from its unlawful threats and penalties. If any authorities are wanted here are, surely, enough:

O'Brien vs. Wheelock, 184 U. S., 450, 492.
U. S. vs. Seven packages of tea, 126 Fed., 224.
Holcomb vs. Boynton, 151 Ill., 300 (37 N. E., 1033).
Moredock vs. Kirby, 118 Fed., 180.

An attempted forfeiture under this "Article III." would have clouded appellant's titles, and appellant was seeking, not a benefit, but to avoid an injury. It ought not to be necessary to waste any time on an objection that is so like an objection to the call for "Police" by an honest citizen who has offered his purse to a highwayman while the muzzle of a "gun" was chilling his troubled brow.

Taking up, therefore, the rulings of the Court in the order in which they appear in the Opinion:

(1.) The Virginia Compact.

Upon this point the Court says:

261 "No one seems to have thought before that the power of the sovereign State of Kentucky was, or was intended to be, curtailed by the compact with Virginia respecting the right of the former to proceed in her own way to coerce taxes from all property within her dominion for her support." * * * "The compact no more prevents the State from forfeiting the title of property whose owners refuse to list it and pay taxes upon it than it denies to this State the power to levy the taxes" (Opinion, p. 148).

If this contains an implication that counsel for appellant have claimed that the compact prevented Kentucky from forfeiting titles for failure to list or pay taxes on land, no matter what the conditions of delinquency and no matter what the conditions precedent and requisite before forfeiture should be effected, the statement is unfair, as no claim of that kind has been made. What appellant contends is that both Article III. of the Revenue Act of 1906 and the attempts, administrative or judicial, to enforce it are null and void under the provision of the Federal Constitution which prohibits any State from passing any law impairing the obligation of contracts, and that this article impairs the obligation of the Compact with Virginia and also the contracts between Virginia and the patentees under whom appellant claims title, which contracts the Compact with Virginia was intended to protect; and that this

262 constitutional prohibition applies to all laws made after the National Constitution became effective in 1789, whether the contracts were made prior to or after that date; and applies not only to legislative enactments but also to judicial decisions impairing such contracts (Appellant's Brief, p. 63). Appellant respectfully denies that "whatever Virginia could have done in subsequent legislation as affecting the titles in question" (if the Com-

pact had not been made) "Kentucky might also do," notwithstanding the Compact (Opinion, p. 149); and respectfully dissents from the statement that the decisions sustain such a statement; and also respectfully denies that Virginia at the time of the separation had provided a forfeiture of titles for failure to list lands for taxation (see supra, I., §12).

(2.) Unlawful Duplicate Taxation.

The Court says:

"It is contended by appellant that the act in question is vicious because it seeks to extort an unlawful duplicate tax upon the same land. In the petitions of appellant is this paragraph:

'Your petitioner is advised by counsel learned in the law and believes that in all of said years and now, under the laws of the Commonwealth of Kentucky, whenever the occupant or occupants of any part or parts of any of said tracts have paid the taxes thereon, which those under whom your petitioner claims ought to have paid or ought to pay, the person so paying the tax shall be entitled to recover of the owner the amount of the tax so paid and
263 interest, which shall continue a lien on the property upon which such tax was paid.'

"The laws of the Commonwealth referred to in the foregoing statement of the petitions are as follows:

'Any person having a lien on property upon which the owner has failed to pay the taxes, and has become delinquent, such lien holder may pay the taxes, interest and penalties thereon, and shall be subrogated to the lien of the Commonwealth, county or district therefor, and the sum so paid shall bear legal interest from the date of payment, and shall be collectible in the same manner as the original claim of the lienholder.

'Wherever the occupant or tenant of any land, or bailee or person in possession of any personal property, shall pay the tax thereon which the owner ought to pay, the person paying the tax shall be entitled to recover of the owner the amount of the tax so paid, and interest, which shall constitute a lien on the property upon which such tax was paid. (Kentucky Statutes, Sections 4032, 4033, continued in force by Act of March 15, 1906, Article 11, Sections 14 and 15; Acts 1906, p. 92.)

'There is no such connection or privity between adverse claimants of land as entitles one to recover taxes voluntarily paid by him on the land, although he in fact did not own it, from another who did own it but failed to list it and pay the taxes.'"

Opinion, p. 149.

264 The appellant submits that no "connection or privity" is required other than that created by the laws of Kentucky. The Court is respectfully referred to the statutes and decisions already cited by the appellant, which it is submitted show this.

Appellant's Brief, pp. 78-85.

"That which the State taxes is the property of the claimant—not the land."

Opinion, p. 149.

This, also, it is submitted, is not in accordance with the law of Kentucky, as declared in its statutes and decisions, whatever the law may be elsewhere.

Appellant's Brief, pp. 78-83.

"Section 4033 provides that 'whenever the occupant of any land * * * shall pay the tax thereon which the owner ought to pay, the person paying the taxes shall be entitled to recover of the owner the amount of the tax so paid and interest.'"

"Section 4035 gives a right of action to a joint owner who pays all the tax where the property has been 'assessed conjointly.'

These sections were intended to fix the liability for the tax as between the person prima facie liable therefor, and from any of whom the State may have enacted its payment. The payment of taxes is generally involuntary; its assessment and the means
265 of collection are necessarily more or less summary; that a mere volunteer who pays the taxes of the owner of property, will not be given either a lien on the property or a right of action to recover the amount paid from the owner is well settled, but where one who can be made to pay it does so, the statutes fix the ultimate liability as between the persons liable, and give a right of action against such one in favor of the other who pays."

1904, Montgomery vs. Montgomery, 25 Ky. L. Rep., 1682, 1683.

The instances cited by the Court in the Opinion, at page 150, of supposed analogous cases of double taxation that is lawful do not seem to appellant to be relevant. The question in the case at bar depends on the character of the taxation of land and the Statutes of Kentucky relating thereto cited in appellant's brief (pp. 78-85).

Continuing the discussion, the Court says:

"The Act of 1906 provides: 'It shall be the duty of each and every owner or claimant of land to pay all the taxes * * * and to list said land * * * for taxation.'

"It also provides: 'The fact that said land has been listed for taxation, or the taxes have been paid thereon by another claimant, shall not relieve against the duty therein imposed.'

"The provision existed under the General Statutes (General Statutes, p. 1036)."

Opinion, p. 150.

266 Again the appellant submits that the Court has been misled into a very serious error.

Counsel for appellant has been unable to find the section last quoted, and here placed in italics in the General Statutes or in any prior acts of the Legislature, nor even in the Revenue Act of 1906, except in Article III. thereof.

If the appellant's counsel be mistaken the appellant asks the Court to point out more specifically where and in what edition of

the General Statutes or elsewhere in the Statutes of Kentucky (except in Article III. of the Act of 1906) this section may be found.

Unless appellant is shown to be in error the statement must stand as in the argument before the Court, viz:

"Notwithstanding all these provisions the framers of Article III. being well aware that taxes on all or almost all these lands had been paid by occupants or other claimants, saw that there was no hope of effecting their object of forfeiting the title of the true owner and vesting it in themselves, unless the true owners were compelled to list their lands a second time in their own names and to pay again to the State taxes on such lands although the taxes for the same years on the same lands had been already paid to the State by occupants who had been subrogated to the State's claim against the true owners. The promoters of this article therefore inserted the following provision:

'The fact that said land has been listed for taxation or the
267 taxes have been paid thereon by another claimant shall not relieve against the duty herein imposed' (Art. III., § 1; Acts 1906, p. 116).

"This in terms requires every tenant in common to list each tract in which he has an interest, although the heirs of the original patentees of a tract are in some cases very numerous. Perhaps in this way the promotors of the article hoped to forfeit the title of at least every heir who failed to petition to list and to discourage a listing by any one or more of the heirs since those so listing, while thereby protecting only their own interests in the land would become chargeable with the taxes on the whole tract, as there is no provision in Article III. as there is in the law of West Virginia, which permits an owner in common to list, or at least redeem his own interest on paying his share.

"But another reason, perhaps, was that the promoters of Article III. hoped in this way to commit the Legislature inadvertently to disregard its prior enactments by which the occupants and lienors paying taxes were subrogated to the rights of the Commonwealth to recover the amounts of such taxes from the true owners, and to give such occupants and owners a lien on the land therefor.

"It would seem that the framers of these provisions of Article III. were endeavoring to imitate the laws of some other States or the most rigorous provisions of such laws (elsewhere referred to in this argument), without some of the conditions to protect
268 the true owner, according to which as construed by the courts of such other States the title or claim and not the land is taxed; and an occupant or lienor who pays the tax is not subrogated to the claim of the State against the true owner.

"But it has been well said, by a careful writer, that:

'There never has been a valid law in Kentucky by which (as in Virginia and West Virginia) the true owner could lose his land by not paying the taxes, as long as the taxes were paid to the State by any one else.'

Dembitz Kentucky Jurisprudence (Ed. 1890), p. 117."

Continuing, the Court says:

"The State is interested not only in having its taxes paid to it, but in having them paid by the persons who ought to pay them. The fact that the State makes a claimant in possession—though not having the best title—pay taxes upon his property, that is, his claim, does not exhaust the State's power to compel any other claimant of a title to the same land to list his claim and pay taxes upon it."

Opinion, p. 150.

This seems to be irrelevant unless the State has attempted to exercise the power which, except perhaps in Article III., it has not attempted to do.

269 But the statement that the State "is interested not only in having its taxes paid but in having them paid by the persons who ought to pay them," does not seem to be supported by reason or authority. The State's only concern is to collect the money that each tract of land should yield in revenue to the State. It ought not to be interested in an attempt to collect the money twice.

The amount of tax having been received by the Commonwealth although not paid by the taxpayer, "the Commonwealth has no longer any claim therefor."

Jones v. Gibson, 82 Ky., 561, 562.

"The payment of taxes by any person extinguishes them (Morrison vs. Kelly, 22 Ill., 610). And see Wilbert v. Michel, 42 La. An., 853. See also Mason v. Chicago, 48 Ill., 420, where taxes on land were paid by mistake by one not the owner, who on discovery of the error got the money refunded, but it was nevertheless held to operate as a payment."

"As the duties of tax officers are ministerial, they cannot decide upon the claim of one offering to pay a tax and claiming to have an interest in the land, but must accept payment. Iowa R. L. Co. v. Guthrie, 53 Iowa, 383."

25 Am. & Eng. Enc. (1st Ed.), 280—note.

Tax Commissioners have no right to establish a rule that they will receive taxes from no one but the owner in person and thus cut off title by sale which would not have been necessary had the owner's agent made tender of the amount of tax which he refrained from doing because of the rule.

270 25 Am. & Eng. Enc., 280—citing U. S. v. See, 106 U. S., 196.

Bennett v. Hunter, 9 Wall. (U. S.), 326.

Tracey v. Irwin, 9 Wall. (U. S.), 326.

Atwood v. Weems, 99 U. S., 183.

The Court says:

"Double taxation is not per se unconstitutional. It is only when taxes are imposed twice by the same government, upon the same property as against the same owner that they are inhibited, and then only by virtue of the clause in the Constitution which requires all taxation to be uniform. It is only when there is a destruction

of uniformity by virtue of the so-called double taxation that it is prohibited."

Opinion, p. 150.

Again the appellant submits that the question is not one of mere double taxation but of unlawful double taxation, unlawful for the reasons stated in appellant's brief.

On the general question, however, we may here quote the highest authority in Kentucky:

"The imposition of a license tax upon an oil depot, where the oil and the building in which it is stored are both already taxed ad valorem equal with all other property in the State, would be double taxation, which is not only repugnant to the general rule of construction, but violates the provisions of the Constitution, requiring uniformity of taxation."

271 HEAD NOTE.—Standard Oil Co. v. Commonwealth, 26 Ky. L. R., 985 (82 S. W., 1020.)

Opinion by Judge O'Rear:

The Court says:

"The statute quoted above, and relied on by appellant, at the utmost, would not give a claimant of land who paid taxes on it, a lien as against the true owner, if the latter also paid. When the Legislature requires the true owner to list and pay taxes on his claim, it is, therefore, no defense under this statute that another (a stranger to the title) has listed them and paid the taxes, and would have a right of action to recover for them if the State did not collect them from the true owner. (Simpson v. Edmiston, 23 W. Va., 675.)"

Opinion, p. 150.

The conclusion here drawn does not seem to be a logical child of the premises, and the authority cited is not law in Kentucky, and even in West Virginia where it is followed, it has been called "somewhat anomalous." (State vs. Harman, 50 S. E., 828, at p. 832).

This decision may be contrary to the Constitution of the United States if not justified under the Statutes of West Virginia, and hence may be a taking of property without due process of law, which cannot be done by judicial decision any more than by legislative or other action.

But however this may be, no holding of the same character, it is submitted, can be sustained regarding lands in Kentucky,
272 which are assessed for full cash value without regard to conflicting title and where the occupants and lienors paying the tax are subrogated to the State's claim against the true owner.

This abominable Article III., if extended to cases where adverse occupants have paid the taxes, is even worse than an attempt at unlawful duplicate taxation. It is an attempt to forfeit, without compensation, the owner's title, because he does not, himself, state that he is obligated to pay an unlawful duplicate tax, and offer to pay and actually pay it.

But again appellant asks that the intentions of appellant be not misunderstood. Appellant is not attempting to evade the payment of either past or future taxes on these lands, but appellant sees no reason why these lands should bear twice the burden borne by other lands of the same value, in other parts of the State, a result which would follow if appellant should pay again to the Commonwealth taxes that have already been paid on the same lands by others who have been subrogated to the Commonwealth's claim therefor.

(3.) (*a.*) Due process of law.

(*b.*) Equal protection of the laws.

The provisions of the National Constitution, safe guarding these cognate fundamental rights of the citizen are cited in the Appellant's Brief together as they appear in the Fourteenth Amendment.

Appellant's Brief, p. 85.

273 (*a.*) Due process of law.

The discussion of this point by the Court is contained in the Opinion (pp. 150-151).

Not a word there said seems to be relevant to the objections made by the appellant that Article III. of the Act of 1906 violates the above mentioned provisions of the Fourteenth Amendment of the National Constitution.

The remarks of the Court regarding the power of State to forfeit for failure to comply with its tax laws, and that Article III. gives the victim a day in court, seem to the counsel for appellant (be it respectfully submitted) "a beating of the air."

The appellant does not claim, and never has claimed, that Kentucky had no power to enact any valid act forfeiting titles for failure to comply with tax laws. The appellant claims that Article III. is not such a valid act and that its execution is unconstitutional, for the reasons specifically stated throughout the appellant's brief and in this argument.

Neither has the appellant claimed that Article III. failed to provide "for a day in court."

It is, of course, a vulgar error to suppose that the requirement of "due process of law" is always satisfied merely by giving the oppressed a day in court no matter what the rest of the "process" may be. Otherwise a conspiracy between the Legislature and Judiciary of a State could make this provision of the National Constitution "a dead letter."

274 The cases in which the Supreme Court of the United States have declared that "due process of law" is provided for if the aggrieved party has his day in court or other due opportunity for redress, should be read in connection with the facts in the cases then before the Court, and the context of the opinion, which show that the Court has intended thereby to deny that an appeal to it could be had in every case where a litigant thought he had not received justice. This rule does not apply where the unjust legislation or decision is clearly contrary to constitutional provisions or to the principles of natural justice.

Years ago the Supreme Court of the United States declared:

"Recognizing the difficulty in defining with exactness the phrase

'due process of law' it is certain these words imply a conformity with natural and inherent principles of justice, and forbid that one man's property or right to property shall be taken for the benefit of another, or for the benefit of the State, without compensation, and that no one shall be condemned in his person or property without an opportunity of being heard in his own defense."

Holden vs. Hardy, 169 U. S., 366, 390; 42 L. Ed., 780, 790.

"This Court has held, notably in the cases of Davidson v. New Orleans (96 U. S., 97) and Yick Wo v. Hopkins (118 U. S., 356), that the police power cannot be put forward as an excuse for oppressive and unjust legislation."

Holden vs. Hardy (supra).

275 Even when the Justices disagree regarding the application they agree upon the principle itself. Thus, in one of the most recent cases, Mr. Justice Harlan, in delivering the prevailing opinion, says:

"The constitutional requirement of due process of law, which embraces compensation for property taken for public use, applies in every case of the exercise of governmental power. If in the execution of any power, no matter what it is, the Government, Federal or State, finds it necessary to take property for public use, it must obey the constitutional injunction or make or secure compensation therefor."

And Mr. Justice Brewer, in a dissenting opinion, says:

"When private property is taken for public uses compensation must be paid. That is the mandate of the Federal Constitution and of that of nearly every State in the Union. Independently of such mandate compensation would be required. In 2 Kent. Com., 12th ed., p. 339, it is said, 'A provision for compensation is a necessary attendant on the due and constitutional exercise of the power of the lawgiver to deprive an individual of his property without his consent;' and this principle in American constitutional jurisprudence is founded in natural equity and is laid down by jurists as an acknowledged principle of universal law." (The Court there-
276 upon cites in addition to this declaration of the great Chancellor, many decisions in the highest courts of many States, and in the Supreme Court of the United States.)

Chicago B. & Q. R. Co. v. Illinois, ex rel. Grimwood, 200 U. S., 561, 593, 598 (50 L. Ed. 596, 611, 612).

As the court well says in the case at bar:

"The forfeiture is not a tax. Nor is it the equivalent. It is a penalty imposed for a violation of a statute."

Opinion, p. 145.

And what is the penalty? It is more severe in some respects than the penalty for treason. For the Constitution of Kentucky declares that:

"No person shall be attained of treason or felony by the General Assembly, and no attainder shall work corruption of blood, nor

except during the life of the offender, forfeiture of estate to the Commonwealth."

Ky. Const., Bill of Rights, Section 20.

Under a constitution providing that no conviction of crime shall work a "forfeiture of estate, no man's property can be forfeited as a punishment for crime."

Miller vs. State, 3 Ohio, 473.

Act forfeiting lands for non-payment of taxes held unconstitutional.

Martin v. Snowden, 18 Gratt., 127.

277 "Excessive bail shall not be required, nor excessive fines imposed, nor cruel punishment inflicted."

Ky. Cost. Bill of Rights, 17.

A similar provision exists in the Constitution of Texas (as of most other States), where it was held that "fine" includes "penalties," and applied to penalties imposed by an act for failure of taxpayer to pay taxes, where the penalties exceeded the amount of the tax, and the act was held void.

Texas Ct. App., 1906. State v. Galveston, etc., Ry. Co., 97 S. W., 71.

(*b.*) Equal protection of the laws.

The court in its opinion has not said a word in regard to one of the most important objections to the constitutionality of Article III. of the Revenue Act of 1906, viz: that it is in conflict with the last clause of the XIV. Amendment of the Constitution of the United States forbidding any State to "deny to any person within its jurisdiction the equal protection of the laws."

Appellant's Brief, pp. 85-89.

The various respects in which this Article III. violates this provision of the Federal Constitution appear in the Appellant's Brief and elsewhere in this argument. The following are specific instances under the procedure of Kentucky:

(1.) That Article III. repeals by implication §734 of the Civil Code of Practice of Kentucky.

(2.) That it repeals by implication § 949 of the Kentucky Statutes.

278 (3.) That it repeals by implication §950 of the Kentucky Statutes.

(4.) That it repeals by express enactment the provisions of §391, §414 and §574 of the Civil Code of Practice.

Appellant's Brief, pp. 55-62; 113-117.

The effect is just as wrong if it be as stated by appellee, viz: "The said sections (391, 410, 414 and 571 of the Civil Code) are not repealed. They are merely made inapplicable in enforcing the general provisions of Article III."

Brief for Appellee, p. 49.

This is one of the ways in which the victims of Article III. are denied the "equal protection of the laws."

Many other of the ways in which Article III. denies to its victims the equal protection of the laws are shown by contrasting the provisions of the other articles of the Revenue Act with the provisions of Article II. See the "deadly parallel" columns of appellant's brief (pp. 108 to 111); also the admirably lucid analysis and cogent statement of this contrast at pages 21 to 25 of the Brief of the Commonwealth filed by Hon. N. B. Hays, Attorney-General, and Hon. C. H. Morris for the Commonwealth, which amply sustain the statement at page 7 of the same brief, to wit, that Article III. is in conflict with the general system of the Revenue Act of 1906 "from beginning to end. It is sandwiched between the general provisions of the former law and is entirely new."

We respectfully submit that in view of the facts of this case, that if every other shield is supposed by the Court to be broken,
279 yet the appellant is protected by the last clause of the XIV. Amendment of the Federal Constitution, and in every step of these proceedings has been denied "the equal protection of the laws."

The provisions of the Federal Constitution forbidding any State to deny to any person within its jurisdiction the equal protection of the law forbid unequal exactions of any kind, among them that of unequal taxation.

25 Am. & Eng. Encyc. of L. (1st Ed.), pp. 54-56.

It seems needless to multiply authorities on this point. Other decisions will be found under other parts of this argument.

(4.) Ex Post Facto Law.

After discussing the appellant's contention that Article III. is contrary to both the Federal Constitution and the Kentucky Constitution because it is taking appellant's property without due process of law the Court says:

"In this connection we will notice another objection made against the statute, which is that it is an ex post factor law; that it punishes an act, or omission, by forfeiture of property, which, when the act was omitted, was not so punishable by law. But such is not the fact. It is not the failure to list in the years 1901, 1902, 1903, 1904, and 1905, that works the forfeiture; but it is the failure after the passage of the act in 1906 to thereafter list the property for the five
280 years named, and before January 1, 1907."

Opinion, pp. 151-152.

This conclusion of the Court (it is respectfully submitted), is clearly an error, and is in the very teeth of the words of the statute, which declares the contrary, viz.:

"Section 1. It shall be the duty of every owner or claimant of land to pay all the taxes which have been assessed, and which should have been assessed, against him, and those under whom he claims, as the owner or claimant of said land as of the 15th day of September,

1901, the 15th day of September, 1902, the 15th day of September, 1903, the 1st day of September, 1904, and the 1st day of September, 1905; and if the said owner or claimant, or those under whom he claims has failed to list said land, or any part thereof, for taxation, as of said dates, or any of them, it shall be his duty to have same assessed and listed for taxation, in the manner and within the time hereinafter provided, as of each of said dates for which the assessment has been omitted, and to pay the taxes, interest and penalties thereon as herein provided.

"The fact that said land has been listed for taxation, or the taxes have been paid thereon by another claimant, shall not relieve against the duty herein imposed.

"If any such owner or claimant, or those under whom he claims, has failed to list such land for assessment and taxation, as of any three of said dates, or has failed to pay the taxes charged, or which should have been charged against him, or those under whom he claims, as the owner or claimant thereof upon said dates, for
281 any three of the years for which said assessments were or should have been made, said owner and claimant and those under whom he claims are hereby declared to be delinquent; and such failures, or either of them, shall be cause for the forfeiture and transfer to the Commonwealth of his said claim and title thereto, in a proceeding to be instituted for that purpose, as hereinafter provided. But said cause for forfeiture shall be extinguished if said owner or claimant, his heirs, representatives, or assigns, shall, within the time and in the manner in this article provided, cause said land to be assessed for taxation, and, on or before March 1, 1907, pay the taxes charged, and which should have been charged against him, or against those under whom he claims, as the owner or claimant thereof, for each and all of said five years, for which he or those under whom he claims are delinquent, together with the interest and penalties provided by law in case of the redemption of land sold for the nonpayment of taxes" (Rev. Act, 1906, Art. III, §1).

Would it be possible to state more clearly that it is the past failure to list these lands prior to the passage of this Act of Legislature that is declared by the Act to be the "cause" of forfeiture (although it was not such a "cause" prior to the passage of the Act) and that the failure to list after the passage of the Act is not a cause of forfeiture but is a failure to "extinguish" the "cause," which in case of such failure simply persists as it was before and according to the Act becomes after the 1st of January, 1907, "inextinguishable," no
282 matter what the unhappy owner may do. This Act, being an attempt at forfeiture, must be strictly construed and held rigidly to its terms; but no difference in its terms or provisions, and no subterfuge, if attempted, to forfeit for failure to remedy after the Act a delinquency which in reality occurred if at all, before the Act of 1906 would have validated the provisions to forfeit for failure to list for taxes that "should have been assessed" in the years 1900 to 1905.

That it is the prior delinquency that is the "cause" of forfeiture is admitted by the appellee (Brief for Appellee, p. 3).

It seems to be a misfortune to the cause of justice that the Court in its opinion should have disposed in ten lines of one of the most atrocious features of this Article III., viz., its ex post facto provisions, and should have then forthwith diverted attention to a supposed assumption of counsel for appellant, "that every retrospective statute is unconstitutional" (Opinion, p. 152). Counsel for appellant do not assume, and never have assumed, a proposition so contrary to elementary law. But the inference that the Court proceeds to draw, viz.; that "the only inquiry is has the Legislature clearly indicated its purpose to tax the property retrospectively" (Opinion, p. 152) is, it is submitted, glaringly erroneous.

The real question on this point (it is submitted) is whether the contention stated in appellant's brief (p. 90) is well founded, viz., that Article III. is an ex post facto law imposing a punishment and extreme penalty for an omission before its enactment to comply with a duty not then existing or not subject to such penalties.

283 "No ex post factor law nor any impairing the obligation of contracts, shall be enacted."

Ky. Const. Bill of Rights, Section 19.

Although this prohibition does not extend to all retrospective legislation relating to rights of property, it does apply and has always been held to apply both in Kentucky and throughout the United States and by the Supreme Court of the United States to all legislation imposing new penalties or increasing or changing former penalties for acts or omissions occur-ing prior to the legislative act.

The Court of Appeals also of Kentucky long ago stated the law:

"Although retrospective legislation neither ex post facto nor impairing contracts may be -onstitutional as when it only regulates remedies for existing rights and wrongs, or aids or confirms rights—yet, consistently with the spirit of the Constitution, personal or proprietary rights cannot be injuriously affected by any such legislation. No such retrospection can operate civilly any more than criminally, on an antecedent act for which, when done, there was no liability to an action for damages or penalty. It is quite as easy to construe the Act of 1866 prospective as retrospective. But, had it been expressly retroactive, it should not be applied to this case, because it partakes of the obnoxious spirit of all ex post facto legislation in authorizing vindictive damages, not merely compen-

284 satory but highly punitory. This statute, therefore, cannot uphold this action, and we know of no law that can sustain it."

O'Donoghue vs. Akin, 63 Ky. (2 Duv.), 478. Opinion by Judge Robertson.

In a very recent case, where it was sought to enforce an ordinance for the listing of property omitted from taxation in previous years, the Chief Justice, delivering the opinion of this Court, said:

The ordinance in question, when properly passed by the City Council, is to be tested as an act of the Legislature. This brings us to consider the next objection to the ordinance, which is, that it is 'retroactive, and an ex post facto law.' To the extent of the pen-

alty it is void. The Circuit Court so held and did not impose the penalty in this case."

Muir's adm'r vs. City of Bardstown, 27 Ky. L. Rep'r, 1150, 1152.

The principal distinction between the just cited case and the case now before the Court is that it did not appear in the case cited that the Legislature was anxious to confiscate the owner's property without compensation.

"The penalty attempted to be annexed for the failure to list the property, when no such penalty existed at the time of this omission, cannot be enforced."

Hoke vs. Commonwealth, 79 Ky., 568, 581.

285 The opinion of the Court in the above cited case of Muir vs. Bardstown was delivered after the opinion of the Court, written by the same judge in Thornton vs. McGrath (1 Duv., 355), which is cited in Durrett v. Davidson (29 Ky. L. Rep'r, 404). The distinction between Thornton vs. McGrath and Durrett vs. Davidson on the one hand and the above cited cases of Muir vs. City of Bardstown, O'Donoghue vs. Akin and Hoke vs. Commonwealth and similar cases on the other side is too great to need elaboration.

The former are cases holding that the taxes may be imposed retrospectively; the latter cases hold that no new penalties of any kind can be imposed retroactively. The penalties in these cases were mere trifles compared to the penalty of forfeiture which is sought to be imposed in the case now before the Court.

The opinion of the Court of Appeals heretofore delivered in this cause errs in stating that counsel for appellant were ignorant of this elementary distinction, and assumed that all retrospective legislation is invalid. The legislation now under consideration, however, is of that vicious kind that is void, because it attempts to exercise a tyrant's power and to punish for past omissions without having previously notified of the penalty. This atrocious Article III. declares that the omissions to list for any three of the five years immediately prior to 1906 shall be a "cause of forfeiture," and that by such omissions the owner's land is "hereby forfeited."

Thus this Article III. does expressly impose a penalty of forfeiture for omissions prior to the act. The provisions for so-
286 called redemption, if it were possible to comply with the conditions in the face of the shotguns of the occupants and the ill-concealed hostility of the courts, do not cure the evil. The penalty itself being void, there is no right to call on the owner to "redeem" from it.

The opinion of the Court in the case at bar on this point as on others (it is submitted) is not only a reversal of the traditions of this Court, as shown during a century of decisions, but is also contrary to the decisions of the courts of all the other States and of the United States.

A statute imposing a penalty for prior omissions by owners of taxable property was held void in

Gager v. Prout, 48 Ohio St., 89; 26 N. E., 1013.

Erie Co. v. Walker, 10 Ohio Dec. (Reprint), 458.

The Legislature may impose a penalty for the non-payment of future accruing taxes, but cannot attach it to taxes which accrued before the statute imposing the penalty.

Ryan v. State, 5 Neb'r, 276; cited 8 Cyc., 915, Note.
See also 10 Cent. Dig., Tit., "Constitutional Law," § 213.

A law imposing a penalty for non-payment of a tax having been repealed—held that the tax might be reimposed by subsequent legislation, but the penalty could not be revived.

Dixon vs. Jersey City, 38 N. J. Law (8 Vroom), 39.

287 An act creating a lien cannot be construed retroactively, because it would defeat vested rights (8 Cyc., 900).

Citing

Day v. Pickett, 4 Minif. (Va.), 104.
Carpenter v. Penn, 17 How. (U. S.), 456 (15 L. Ed., 127).
Watson v. Mercer, 8 Pet. (U. S.), 88 (8 L. Ed., 876).
Calder v. Bull, 3 Dall (U. S.), 386 (1 L. Ed., 8).
Van Horne v. Dorrance, 2 Dall. (U. S.), 304.
Evans v. Robinson, 8 Fed. Cas., No. 4571.
Minge v. Gilman, 17 Fed. Cas., No. 9631.
See 10 Cent. Digest Const. Laws, § 551.

"A legislative interpretation changing titles, founded on existing statutes, is subject to every objection which lies to an ex post facto law, since it would destroy the rights already acquired under the former statutes by one made subsequent to the time when they become vested."

Turner v. Turner, 4 Call. (Va.), 234, cited 8 Cyc., 899, note.

The same principle applies to judicial decisions. These cannot have the effect of an ex post facto law in divesting rights or impairing contracts any more than can acts of legislature.

Havermeyer v. Iowa Co., 70 U. S., 294 (18 L. Ed., 38).
288 Weightman v. Clark, 103 U. S., 256 (26 L. Ed., 392).
Louisiana v. Pillsbury, 105 U. S., 278 (26 L. Ed., 1090).

An act which attempted to make certain railroads personally liable to a city for the payment of special improvement assessments made prior thereto, and for which before its passage they were not so liable—held unconstitutional and void.

City of Grand Rapids vs. L. S. & S. Ry. Co., 89 N. W., 932; 9 Detroit Leg. N., 30.

An act authorizing a board of education of a township to pay to the board of education of a school district, set off and created therein, a sum of money equal to the equitable share due to the latter from the township school fund—held, violative of Const., Art. 2, 28, as it is an ex post facto law, in that it attempts to create and enforce a liability that did not before exist.

State vs. Board of Education, 12 O. C. D., 423.

"It is not essential, however, in order to render a law invalid on these grounds, that it should expressly assume the action to which

it relates to be criminal or provide for its punishment on that ground.

"If it shall subject an individual to a pecuniary penalty for an act which when done, involved no responsibility, or if it deprives a party of any valuable right—like the right to follow a law-
289 ful calling—for acts which were innocent when committed, the law will be ex post facto in the constitutional sense, notwithstanding it does not in terms declare the acts to which the penalty is attached criminal."

Cooley's Constitutional Limitations, 6th Ed., p. 321.

"A law whose object is the punishment of past offenses is unconstitutional as an ex post facto law although the penalty is merely a civil disability, such as a disqualification from practising a profession, from prosecuting or defending a civil action, or a f-eiture of property by civil process."

8 Cyc., p. 1033.

The Rights of Appellant as Purchaser.

In addition to the reasons just stated, why this Article III. is void as ex post facto in its application generally to past "delinquencies," there is still another reason why this Article is thus void in its application to Appellant, viz., because the Appellant is a purchaser from a grantor who was himself not a "delinquent."

As pleaded by the Appellant, in answer to the petitions to forfeit its title in the suits now pending in the local courts, the Appellant "was not an owner or claimant of any of the lands described in the plaintiff's petition herein, or of any part thereof, or interest therein, on the 15th day of September, 1901, nor on the 15th day of
290 September, 1902, nor on the 15th day of September, 1903, nor on the 1st day of September, 1904, nor on the 1st day of September, 1905, nor at any time between or prior to said days, nor thereafter prior to the aforesaid 8th day of February, 1906, on which last mentioned day this defendant Eastern Kentucky Coal Lands Corporation and the defendant herein Charles B. Hillhouse entered into the agreement aforesaid; that said Hillhouse was not an owner or claimant of any of the tracts of land described in the plaintiff's petition herein, or of any part thereof, or interest therein on or at any time prior to the 1st day of September, 1905, and that none of the titles, claims and interests so purchased by said Hillhouse were purchased or conveyed or agreed to be conveyed to him until after the 1st day of September, 1905; that such titles, claims and interests were respectively in and to undivided shares of the tracts described in the plaintiff's petition herein; that some thereof were purchased by said Hillhouse and sold by him to this defendant prior to the enactment of the Act relating to Revenue and Taxation, approved March 15, 1906, and described in the plaintiff's petition herein."

The statutes of Kentucky retain the lien of the Commonwealth for taxes already assessed for five years, but a retrospective assessment shall not prejudice rights of purchasers acquired in meantime.

Ky. Stats., §4021.

Gen. Stats. of 1873, Ch. 92, Art. I., Section 2, incorporating the provision which had formerly existed in favor of a "perpetual
291 lien of the State for taxes," was amended by Act of 1886; so as to provide that the lien of the Commonwealth should not exist longer than five years.

Section 4021 of Ky. Stats. is a further amendment of the same provisions, and adds that "When any lands or improvements shall "not be assessed in any one year, it may be assessed retrospectively "in the manner provided by law for that year at any time not later "than five years thereafter, but the lien thereby accruing shall not "prejudice the rights of purchasers acquired in the meantime."

This provision against prejudice of purchaser by retrospective assessment was added by Act March 15, 1894—Acts 1894, Ch. 67, p. 166; amending Acts 1891-2-3, p. 278.

The reason of the law if that stated by Chief Justice O'Rear.

"It is the policy of the law to put at rest stale demands of whatever character. This applies as well to taxes as to other matters."

So said Judge O'Rear, in 1903, delivering the opinion of the Court of Appeals of Kentucky.

Chicago, etc., Co. v. Commonwealth, 115 Ky., 278; 24 R., 2124, at p. 2125.

"It will be noted that the subject in hand and under treatment by the sections last quoted is the one of the lien of the taxing district, or State, even after the property has passed into the hands of others owning it when it should have been assessed."

"The last clause of Section 4021 (of Ky. Stats.) referring to
292 the power of the State to assess omitted property for back taxes for five years, must be understood to refer to that class of property. That section recognizes, as does the act of 1890, that the right to assess omitted property is limited to five years from the time when it should have been assessed. This limitation is found in Sections 2523, 2515 and 469 of Kentucky Statutes above quoted * * * We are of opinion that a proceeding to compel a taxpayer to list property for any one year is such a proceeding as is embraced in the statute supra and if not begun in the proper court within five years from the time when the action could first have been instituted the State is barred of her right to thereafter maintain the action."

1903—Chicago, etc., Co. v. Comm., 115 Ky., 278, 24 R., 2124, 2126; Opinion by Judge O'Rear.

"It will be observed that this section is preserving the State's lien for taxes and protecting innocent purchasers."

Opinion by Judge Nunn, in Commonwealth vs. Nute, 115 Ky., 239, 24 R., 2138, 2140.

The above mentioned section 4021, of Ky. Stats. fixing statutory limit of five years in retrospective taxation, has always been strictly enforced ever since its enactment.

Comm. vs. Hamilton's Trustee, 24 Ky. L. Repr., 1944;
Comm. vs. Nute, Id., p. 2138;
Chicago, &c., Co. vs. Comm., Id., p. 2124.

293 "The Commonwealth has a lien for a tax due it on the property assessed only by virtue of the statute; by the terms of the statute such a lien exists only where there has been a properly assessed tax, and only for a period of five years. A mere common law judgment in favor of the Commonwealth against a railroad company, for the amount of taxes due for several years, does not create or fix any lien on such railroad property, the lien existing by virtue of the statute, if at all."

HEAD NOTE.—Kentucky Central R. R. Co. v. Commonwealth, 13 Ky., Law Repr., p. 484.

"Limitation was not pleaded to the retrospective assessments, but we have held in several cases that retrospective assessments were barred after five years from the time the property should have been assessed."

Opinion by Judge Hobson, Commonwealth v. Citizens' Bank, 25 Ky. L. R., 2100, 2105; followed in Citizens' Bk. v. Commonwealth, Id., p. 2254.

So, too, without express statutory provision, a remainderman and a purchaser from him "is entitled to receive the property free from "all charges (for taxes) which the law casts upon the life tenant."

1901—Brodie vs. Parsons, 23 Ky. L. R., 831, 833 (64 S. W., 426)—Opinion by Judge Hobson.

It is clear, therefore, that under the Statutes of Kentucky in force in the years 1900 to 1905 and for years prior thereto, even if
294 taxes had been assessed upon the lands against the then owner, there would be no lien therefor upon the title of a purchaser claiming under such owner.

But even prior to the amendment of 1894 there was no lien whatever if the taxes had not been assessed, even if the taxes should have been assessed; and a purchaser took the property free from any lien for taxes which should have been but had not been assessed, although a judgment for the amount of the taxes had been entered.

1891—Kentucky Central R. R. Co. v. Commonwealth, 92 Ky., 64; 13 Ky. L. Repr., 484; 17 S. W., 196.

And even if there be such a lien against one remaining the owner, it would be a lien making the lands subject to sale and on which the purchaser could protect himself by paying the tax or buying in the property, or, if he failed to do either, he would be entitled to the surplus proceeds of sale. It would be impossible under any principles of Constitutional law to turn this lien into a "cause of forfeiture" by an act passed after the delinquency.

A fortiori this would be impossible where no taxes had been assessed, and where the land had been purchased by others from the delinquent.

(5.) "Police Power."

In the course of the opinion the Court says:

"One complaint is that the measure is really not one of revenue,
but of police; and that, therefore, it is not germane to the
295 title. There will be found in this general act many features which partake of police regulation as well as of revenue. This is particularly true of the most of the article devoted to license, such as liquor licenses, peddler's, pawnbroker's, billiard tables, pool rooms, exhibitions or circuses, and the like. Such measures might, without any impropriety, have been classed under either head, as they truly pertain to each as they are treated of" (Opinion, p. 146).

Counsel for appellants respectfully protest against this expression of the Court if the language of the Court is intended to imply that the appellant's counsel concede, or ever assumed as a possibility, that these lands could by any statute, in any way, be confiscated or forfeited under the "police power" of the State. It is submitted that there is not a word in appellant's brief or arguments of its counsel to justify such an inference.

The law all over the country is that—

"The legislature cannot under the guise of exercising the police power arbitrarily invade personal rights or private property, nor impose upon property burdens so excessive as to work a confiscation thereof."

8 Cyc., 864.

The Constitution of the State of Kentucky is most emphatic:

"Nor shall any man's property be taken or applied to public
296 use without the consent of his representatives, and without just compensation being previously made to him."

Ky. Const. Bill of Rights, Section 13.

"Absolute*ly* and arbitrary power over the lives, liberty and property of freemen exists nowhere in a republic, not even in the largest majority."

Ky. Const. Bill of Rights, Section 3.

"To guard against transgression of the high powers which was have delegated. We declare that everything in this Bill of Rights is excepted out of the general powers of government, and shall forever remain inviolate; and all laws contrary thereto, or contrary to this Constitution, shall be void."

Ky. Const. Bill of Rights, §26.

The Court of Appeals of Kentucky, in construing the foregoing section, as it appeared in an earlier Constitution of Kentucky, said bluntly:

"There are no implied exceptions to the Bill of Rights."

Commonwealth vs. Jones, 73 Ky. (10 Bush.), 725, 746.

See also Pratt vs. Breckenridge, 23 Ky. L. R., 1356 (65 S. W., 136).

A very recent decision in a sister State may show the mind of the Courts of the States generally. The head note summarizes as follows:

297 "While the State has the right to enter upon private lands for the purpose of surveying and locating boundary lines, its agents exceed their lawful powers when, without provision for compensation, they inflict substantial and permanent damages upon such property in locating a permanent base line, although the work is done with due care and skill." * * * "In the absence of any overwhelming necessity or emergency requiring immediate action, the police power cannot be properly invoked to justify such action." * * * "Such an entry and occupation is a taking of property within the meaning of the State and Federal Constitutions."

"When, therefore, public officers assume to act for the State, and although acting in good faith and believing themselves authorized to act for it, take and destroy property without due process of law and just compensation, their acts, being contrary to law, cannot be the acts of the State, but are their individual acts, for which they alone are responsible and an action is maintainable against them personally to restrain the further commission of such unlawful acts and to recover the damages already accrued."

Litchfield v. Bond, 186 N. Y., 66 (78 N. E., 719).

298 The principle of law which is stated in the last above cited clause is not peculiar to the jurisdiction where it was on that occasion enunciated, and is commended to the attention of all those who, in the name of the Commonwealth, are prosecuting or inciting the prosecution of litigations for attempted forfeiture of the Appellant's title under a law which the Attorney-General of the Commonwealth on the argument of this cause has declared to be unconstitutional and void.

The Court in the course of its opinion, in the last cited case says: "A controversy of such long standing, even though it involved the jurisdiction of Courts, the right of the franchise and the power of taxation, presented no exigency that required the immediate and arbitrary exercise of the police power or the law of overwhelming necessity in the invasion of private rights (Am. Print. Works v. Lawrence, 23 N. J. Law, 590; Matter of Jacobs, 98 N. Y., 108; Wynehamer v. People, 13 N. Y., 401). It is to be observed, moreover, that the police power, which is concededly an inherent attribute of sovereignty, should be permitted to override or nullify our constitutional limitations only in cases of the highest public necessity. That governmental power, like every other, is subject to the Constitution, and when it is paramount it is because it is not limited by the Constitution, or because some immediate and overruling emergency calls for the application of the maxim salus populi suprema lex." * * * "Such a statute, if intended

299 to authorize the exercise of the right of eminent domain, would be clearly unconstitutional, because it makes no provision for compensation to those whose private property is to be taken for a public use."

Litchfield v. Bond, 186 N. Y., pp. 67-72, 73, 74 (78 N. E., 719).

Finally, hear the Supreme Arbiters, declaring the law in a very recent case, where the justices, while differing in their application to the case then before the Court, were unanimous in their judgment of the principles of the law.

Mr. Justice Harlan, in delivering the opinion of the Court, said:

"If the means employed have no real substantial relation to public objects which government may legally accomplish—if they are arbitrary and unreasonable beyond the necessities of the case—the judiciary will disregard mere forms and interfere for the protection of rights injuriously affected by such legal action. The authority of the courts to interfere in such cases is beyond all doubt. Minnesota v. Barber, 136 U. S., 313, 320, 34 L. Ed., 455, 458; 3 Inters. Com. Rep., 185, 10 Sup. Ct. Rep., 862. Upon the general subject there is no real conflict among the adjudged cases. Whatever conflict there is arises upon the question whether there has been or will be in the particular case, within the true meaning of the Constitution, a 'taking' of private property for public use."

300 Mr. Justice Holmes, concurring, said:

"I concur in the main with the judgment of the Court. I agree that the public authority has a right to widen or deepen a channel if it sees fit, and that any cost that the railroad is put to in rebuilding a bridge the railroad must bear. But the public must pay for the widening or deepening."

Mr. Justice Brewer, dissenting, said:

"When private property is taken for public uses compensation must be paid. That is the mandate of the Federal Constitution and of that of nearly every State in the Union. Independently of such mandate, compensation would be required. In 2 Kent. Conn., 12th ed., p. 339, it is said":

"A provision for compensation is a necessary attendant on the due and constitutional exercise of the power of the law giver to deprive the individual of his property without his consent; and this principle in American constitutional jurisprudence is founded in natural equity, and is laid down by jurists as an acknowledged principle of universal law. See also cases cited in the note, especially Gardner v. Newburgh, 2 Johns. Ch., 162, 166, 7 Am. Dec., 526."

"In Sinnickson v. Johnson, 17 N. J. L., 129, 145, 34 Am. Dec., 184, referred to approvingly by this Court in Pumpelly v. Green Bay & M. Canal Co., 13 Wall., 166, 178, 20 L. ed., 557, 560; and Monongahela Nav. Co. v. United States, 148 U. S.,

301 312, 324, 37 L. ed., 463, 467, 13 Sup. Ct. Rep., 622, 625, it was said:

"This power to take private property reaches back of all constituted provisions; and it seems to have been considered a settled principle of universal law that the right to compensation is an incident to the exercise of that power; that the one is so inseparably connected with the other that they may be said to exist, not as separate and distinct principles, but as parts of one and the same principle."

"If this be true when the taking is for that which is solely a public use, how much more true is it when the taking is largely for the benefit of private individuals, and at best only incidentally for the benefit of the public? Now the sole purpose of this proceeding,

as admitted by the demurrer, was the transformation of these swamp and untillable lands into good tillable lands; in other words, to that extent, increasing the value of the farms in the hands of their private owners. While the statute under which these proceedings were had contemplates drainage for agricultural and sanitary purposes, there is nothing in this record to show that any sanitary result was contemplated, and the only object disclosed is the direct beneficial result to the owners of these swamp lands. There is not the slightest intimation that the health, morals, or safety of the community will be promoted, or is intended to be promoted, by the drainage"

* * * "But it is said that this is done under the police
302 power of the State, and that that can be exercised without any provision for compensation. It seems to me the police power has become the refuge of every grievous wrong upon private property. Whenever any unjust burden is cast upon the owner of private property which cannot be supported under the power of eminent domain or that of taxation, it is referred to the police power. But no exercise of the police power can disregard the constitutional guaranties in respect to the taking of private property, due process and equal protection, nor should it override the demands of natural justice."

Chicago, B. & Q. R. Co. v. Illinois ex rel. Grimwood, 200 U. S., 561, 593, 598 (50 L. Ed., 596, 611, 612).

The question, so far as the case now at bar is concerned, seems to appellant's counsel to be too absurd for more lengthy discussion. If this atrocious Article III. of the Kentucky Revenue Act of 1906 could be justified as a legitimate exercise of the "police power" all other constitutional restraints would be a mockery. The police power would nullify all of them.

(6.) "Harsh, Oppressive and Unjust."

The Court says:

"There are a number of other objections made to the statute by appellant, all of which may be grouped under the general
303 complaint that it is harsh, oppressive and unjust. Were these objections well grounded, they would afford no basis for relief at the hands of the court. The policy of the legislature may be looked into by the courts for the purpose only of interpreting statutes. If then they are found to be within the power of the legislature to enact, the business of the court is ended. That the legislature saw proper to enact a harsher remedy than it might have done; that it allowed the minimum of grace to the taxpayer; that it imposed most onerous penalties for his defaults; that it imposed even greater penalties than it does as against other classes whose fault may be no greater; that it does not even excuse infants, or married women, or persons laboring under disability, when the general policy of legislation is to deal more indulgently with those classes; are all considerations of expediency which appeal to the good sense and the conscience of the legislators. It is not tolerable in our form of government, with its distinct separation of powers, that acts of the legislative branch should stand or fall according as

they appealed to the approval of the judiciary; else one branch of government, and that the most representative of the people, would be destroyed, or, at least completely subverted to the judges. We do not say that this act is to be regarded in the light of the history of its enactment and the abuses it was intended to remedy, as falling within the category described. There is abundant basis for the act
304 in which it will appear not only as reasonable, but as highly politic. All that we do mean to say is, that tested by any precedent and principle, we are unable to find that it violates any provision of the Constitution of the United States or of this State, or in any wise transcends the power of the legislative department of the State government" (Opinion, p. 152).

Under this one head and in this summary manner apparently the Court deems it proper to brush aside various objections of the Appellant's contentions, including the objections:

"That Article III. violates the State and Federal Constitution because it is 'an Act of spoliation and lawless confiscation and is revolutionary and subversive of all constitutional and orderly government'" (Appellant's Brief, pp. 100-113).

"That the Article imposes pretended duties impossible to be fulfilled within the time allowed therefor, and attempts to forfeit land for failure to comply and without regard to innocence" (Id., pp. 95-97).

The answer of the appellant to the last cited extracts from the Court's opinion may be found in various other parts of this petition. It seems not necessary to extend further the length of this argument by citing other authorities here except the following:

"While it may be true that the fact that a tax statute, or a tax laid under a statute, is in violation of the Constitution of the State, is not of itself necessarily sufficient to constitute a violation of
305 Const. U. S., Amend't 14, yet, when in addition, the statute results in an arbitrary and oppressive discrimination in regard to a large class of citizens, or a large species of property, it is such class legislation, and such denial of the equal protection of the laws, as renders it obnoxious to the 14th Amendment."

U. S. Circ. Ct., 1898, Nashville, C. & St. L. Co. vs. Taylor, 86 Fed., 168.

It is enough to bring taxation imposed by a State, or under its authority, within the scope of the provision of the Fourteenth Amendment of the National Constitution relating to due process of law, if the case is "so clearly and palpably an illegal encroachment upon private rights as to leave no doubt that such taxation by its necessary operation is really spoliation, under the guise of exerting the power to tax."

Henderson Bridge Co. vs. City of Henderson, 173 U. S., 592, 615 (43 L. Ed., 831).

"Though a law be fair on its face and impartial in appearance yet, if it is administered by public authority with an evil eye and an unequal hand, so as practicably to make discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution."

Yick Wo vs. Hopkins, 118 U. S., 356 (30 L. Ed., 220, 227).

306 IV. The Refusal to Permit the Appellant to List.

The Court's objections to appellant's petitions to list are "first, they do not disclose the names of the owners" of "the remaining portions of the tracts," not owned by the appellant (Opinion, p. 153); second, "the interest of the listing owner if he owns less than the entire tract must be so described as that it can be identified" (Id., ibid); third, they do not show where, in what part of the county the parts to be assessed do lie; nor do they show where the excluded parts which it is admitted do not belong to the petitioner lie" (Id., ibid).

But first, the statute does not require the petition to state the names of owners of the remaining portions of (or interests in) the tracts; second, the statute directs that "the land," not the listing owner's interest in it, shall be listed; third, the place in the county where the land lies is necessarily shown, because, as even the Court admits, the descriptions are "by calls and distances, which it may be assumed were sufficiently explicit to have located the several boundaries" (Opinion, p. 152), and to these descriptions, for greater certainty and definiteness, are appended statements showing how and on which side they are bounded by other designated tracts described in the petitions or by the County line, when the County line is one of the boundaries. All these tracts adjoin each other and a plat can easily be drawn of the whole of them in their relative positions, and as some of the descriptions refer to natural monuments each and all of the tracts can thus be located. There are no excluded parts, except parts of the surface, and the land under the surface is
307 not excepted in any case. These excepted parts of the surface could not have been accurately determined unless the petitioner had been given much more time than was allowed by the statute to determine the rights of those claiming by adverse possession, and, perhaps, unless also the Commonwealth had furnished a large police force or the militia of the Commonwealth to protect surveyors, &c., needed to determine such parts to be excepted.

After stating the alleged objections as above set forth, the Court says:

"Nor are these objections merely technical, interposed whimsically so as to defeat the proposed listing of the land, and so as to work its forfeiture" (Opinion, p. 153), and then the Court proceeds to state why the things (omitted from the petition, but it is submitted, not required by the Act), are, in the Court's estimation, needed for the purposes of a revenue act. But, it is submitted, no one is bound to conform to requirements that the Court thinks ought to have been contained in an act, if not actually contained therein, and this is of course especially true of a forfeiting act which, according to all the canons of construction, must be construed with the greatest strictness.

In any event, the appellant should have been given an opportunity to amend after the alleged defects had been definitely declared by the Court.

The rigor of the Court's requirements would seem more appropriate to an examination on an application to be exempted from paying

taxes rather than on an application to pay taxes which the applicant did not owe.

308 Perhaps the action of the local courts would have been different if the conditions under which these courts conducted their deliberations had been different. The "state of things" in the Court House when the arguments were heard on the petitions of the appellant theretofore filed, has been already referred to. The appellant in later proceedings has pleaded.

"That the violent and lawless demonstration against this defendant enacted in the court room of the Floyd County court and in the county seat of Floyd County on the 14th day of January and in Pikeville on January 15, 1907, was, as defendant is informed and believes and therefore charges, part of a deliberate plan and scheme devised by" (persons there named,) "acting for themselves and" (certain designated corporations), "and other interests similarly situated, to acquire title of the defendant to the grants owned by it and described in the petition herein. That Article III. of the Act of March 15, 1906, was enacted at the behest and under the promotion and manipulation of" (such persons for themselves and said corporations and other interests similarly situated), 'with the intent and purpose of acquiring under the terms of its provisions the title of defendant to the land covered by the grants described in the petition herein, but with the hope and expectation that the owners of title under these elder grants would not appear to list its land

309 described in the petition herein for taxation prior to January 1, 1907,' and that said persons 'in a desperate effort and as a last resort to make effective the provisions of Article III. of the Act of March 15, 1906, excited the citizens of Floyd County and Pike and Letcher and Knott counties by representations that defendant intended and was about to eject from their homes all persons living within the boundaries of its said grants described in the petition herein, and under this and other pretenses gathered hostile and excited armed crowds to the Floyd and Pike County Court Houses to menace and intimidate the Court in its action as hereinbefore stated,' and that such persons and corporations, "and not the Commonwealth of Kentucky, are the real parties in interest herein as plaintiffs in the suits that purports to be in the name of the Commonwealth."

The statements of the appellee that the appellant's filing of petitions was a mere pretense,

"well knowing that they (appellant) could not recover any of the land" (Brief for Appellee, pp. 8-9),

are, of course, untrue, and destitute of evidence.

So, too, of course, is the appellee's statement that the appellant

"filed its petition in the Pike County Court showing its delinquency for the five years named."

Brief for Appellee, p. 8.

310 Even the fear of the wrath of the Legislature, and the still greater fear of execution of its Act by those so pliant to the wishes of the promoters of Article III., could not induce the

appellant to accuse itself of ante natal sins. The appellant was not born until the 7th day of February, 1906.

If there are any defects in the petitions they are not defects which appellant refused to remedy. They were never pointed out and the appellant was not given an opportunity to amend.

But it is useless to discuss this further. The Court's attitude like that of the local courts, seems to be the result of the conclusion that the Legislature intended that these titles should be "outlawed" instead of being taxed.

V.—Conclusion.

Before bowing, as at last appellant must, to the decision of this Court, whatever it may be, appellant asks for a review of the opinion filed, with the hope that the outcome may enable appellant to make the bow with greater reverence, because a correction by the Court of whatever errors may have occurred in the Opinion, must necessarily increase the respect that is due, since there is no Court existing on this painful earth always free from error, and the correction of its own errors does but increase the honors of the Court.

Summing up, therefore, the substance of the case before the Court, the lands claimed by the appellant are wild lands—uncultivated and unenclosed forests as described recently by the Chief
311 Justice of this Court (supra), on the slopes and tops of mountains, poorly fitted for agriculture or settlement, which is now confined, as it always has been confined, to the "bottoms," which although within the boundaries of appellant's patents have been lost by the original owners because of adverse possession. All of these lands were purchased from the State of Virginia over a century ago by the appellant's ancestors in title for money which if placed at interest would now amount to an immense sum. The price paid per acre for these wild lands proved to be far more than the lands were worth either then, or indeed for nearly the period of a century thereafter. Indeed they were for all this period worth practically nothing—a wilderness where any man or beast might roam, far removed from avenues of transportation of the minerals contained in the bowels of the barren hills.

The taxes on these wild lands were, as they should have been during all these years, a trifling sum, because (1) taxation in Kentucky, as in all well constituted States, was according to the value of property and the expenses of the local government, for many years very small, and increased only with the increase in population that settled in the bottoms, where practically all the value of the property of all kinds in these counties was for many years; and also because (2) taxation is generally intended to be somewhat in accordance with the benefits received from the government sustained by the taxes, and for all those years the owners
312 of these lands and the lands themselves received but little benefit from the government, the expenses for public buildings, roads, etc., being confined almost entirely to the "bottom" lands and the inhabitants thereof; and the policing being nece-

arily insufficient to protect the owners of these lands from the animosity of the lawless.

The officers of the two Commonwealths of Virginia and Kentucky having made two sales and obtained two prices for the same land, the officers of Kentucky are now seeking to obtain two full sets of taxes on the full value of the same land, thus availing themselves of a former iniquity as a means to perpetrate another iniquity.

Nothing, except a railroad, among the existing resources of civilization could give anything but a remotely prospective value to these "unenclosed forests," and with rumors of the near advent of a railroad came the speculators. Some of the settlers in the bottoms, and others not even settlers, took up the role of speculators in one way by paying the County officials five cents an acre for "patents," which the County officials executed, purporting to derive all their authority under acts of the Legislature of Kentucky, which declared them to be "absolutely null and void" if the land had been already appropriated (as all of it had been) by others. Still more speculative spirits bought the "titles" or "moral rights" to much of the mineral interests in the lands thus acquired for five cents per acre, and paid therefor prices ranging generally from fifty cents to two, three or five dollars an acre.

313 The incorporators of the appellant and their associates have been for years seeking to consolidate the interests of the settlers or those claiming under them, on the one hand, with the claims of the owners of these lands under the earliest patents, on the other, in order to produce a marketable and safe title, which would induce the contribution from others than the settlers of capital needed for the development of these lands.

After the expenditure of much time, effort and money for the purpose in view, the incorporators of the appellant and their associates are met by an attempt to forfeit all the titles collected for such purpose under the ownership of the appellant; the attempt being made in alleged pursuance of one article of an Act of the Legislature which is in glaring inconsistency with the general laws included in the same Act. The Attorney-General of the Commonwealth stated in the brief filed by him on the argument of this cause, and also declared in person, orally, on that argument:

"That said Article 3 is clearly unconstitutional and that it was not enacted in the interest of the people at large," and that "he desires this brief to be considered as the position of the Commonwealth on this important question."

Brief of Commonwealth, p. 46.

The appellant, being advised by counsel that the Act was unconstitutional, but being threatened with an imminent danger of attempted forfeiture which would cast a cloud upon its title,

314 attempted in good faith to comply with the terms of the Act, in all the respects in which it seemed the Act could by any possibility be reasonably deemed to be applicable to appellant, and at the earliest possible moment appealed to the protection of this Court.

The grounds of that appeal were presented in appellant's brief

heretofore submitted to the Court and to which reference is now made for a fuller statement.

The grounds of the appellant's petition for a reconsideration of the decision expressed in the Court's opinion are stated in the foregoing argument.

It is respectfully submitted that the courts of a Commonwealth which has received from the appellant such prompt and faithful obedience to its laws, such willingness to pay tribute, such eagerness to contribute to the solution of its difficulties, such readiness to perform the whole round of civic duties, should certainly find no difficulty or embarrassment in extending to such a suitor the fair and liberal and just construction of its laws.

HOPPIN & BERARD,
JAMES H. HAZELRIGG,
WM. JACKSON HENDRICK,
Counsel for Appellant.

("Counsel for appellant, in addition to their own humble efforts, commend especially to the attention of the Court the parts of the "Brief of the Commonwealth" referred to at page 60 (*supra*) and the parts of the able brief of our learned brethren, Messrs. Charles C. McChord, and Edward W. Hines and their associates, which discuss the same matters considered in this petition.)

315 And afterwards at a Court of Appeals held at the Capitol at Frankfort on the 24th day of March, 1908, the following order was entered, to-wit:

Pike.

EASTERN KY. COAL LANDS CORPORATION
v.
COMMONWEALTH.

Floyd.

SAME
v.
SAME.

Knott.

SAME
v.
SAME.

Letcher.

SAME
v.
SAME.

The Court being sufficiently advised it is considered that the motion and petition of appellant for a rehearing in the foregoing case be and the same are overruled.

And afterwards at a Court of Appeals held at the Capitol at Frankfort on the 26th day of March, 1908, the following order was entered, to-wit:

Pike.

EASTERN KY. COAL LANDS CORPORATION
v.
COMMONWEALTH.

Floyd.

SAME
v.
SAME.

Knott.

SAME
v.
SAME.

Letcher.

SAME
v.
SAME.

Judge Hobson delivered a dissenting opinion herein. The dissenting opinion by Judge Hobson, mentioned in foregoing order is in words and figures as follows, to-wit:

316 Court of Appeals of Kentucky, March 26, 1908.

EASTERN KENTUCKY COAL LANDS CORPORATION, Appellant,
vs.
THE COMMONWEALTH OF KENTUCKY, Appellee.

Dissenting Opinion by Judge Hobson.

When an act is not punishable under the law in existence when it is done, it cannot be made punishable by the Legislature by a law subsequently passed; and upon like principles, where an act is punishable in a certain way when it is done, the Legislature cannot by a subsequent law add to the punishment or penalty. The Legislature cannot deny to any one the equal protection of the laws; and in my judgment article three of the Revenue Act of 1906 is void, both on the ground that it is *ex post facto* legislation, and that it denies to the holders of land titles referred to the equal protection of the laws.

The act was approved March 15, 1906. It took effect about ninety days thereafter. The first section of the act makes it
317 the duty of every owner or claimant of land to pay all the taxes which had been assessed or should have been assessed

against him or those under whom he claims, as of the 15th. day of September, 1901, 1902, 1903, 1904 and 1905. And if it had not been assessed for any of these years, the act made it his duty to assess the land and pay the taxes, interest and penalty therein provided for. His failure to do this is made a cause for the forfeiture of his title, but this forfeiture shall be extinguished if on or before March 1st, 1907, he lists the land and pays the taxes with the interest and penalties provided by law in case of the redemption of land sold for the non-payment of taxes. When land is sold for the non-payment of taxes, a penalty of fifteen per cent is added, and the taxes bear interest at the rate of ten per cent. So that, the meaning of the act is that the owner of land who had failed to list it for the years named must list it after the act takes effect and pay a penalty of fifteen per cent., also interest on the taxes at ten per cent per annum from the time he was delinquent, that is, from the time the land should have been assessed. By the law in force up to the time this act took effect, the owner of land which had been omitted from assessment might voluntarily have it assessed at any
318 time and pay the taxes without interest or penalties. If he failed to list it voluntarily, and a proceeding was instituted against him under section 4241 of the Kentucky Statutes, he was liable to a penalty of twenty per cent., which went to the officer instituting the proceeding; but, even in this case, he was not liable for interest at ten per cent. on the taxes; and if he made the assessment voluntarily without a proceeding being instituted against him, he was not liable for the penalty of twenty per cent. While the act gives him until March 1, 1907, to list his property and pay the taxes, from the moment the act took effect the only way that he could escape the forfeiture of his title was to pay not only the taxes but the interest and penalty. The act does not give him a certain length of time to list his property and provide that if he fails to list within that time he shall be subject to the penalty, but it imposed the penalty upon all who are delinquent in listing their land and who would escape the forfeiture of their title by listing it after the act takes effect. It is said that so much of the act as imposes the penalty for the past delinquency may be rejected, and that the balance of the act may stand; but this is not a case in which that rule can be applied,—for the reason that the act forfeits the title of all persons who had failed to list their land for the years
319 named, and the only way in which they can escape the forfeiture is by paying the taxes with interest and penalty. If they do not pay the taxes, interest and penalty, the forfeiture stands. If that part of the act which provides for the extinguishment of the forfeiture is invalid, then there is no way in which the owner can escape the forfeiture. Besides, this is an essential part of the whole scheme of the act, and it cannot be presumed that the Legislature would have passed the act without this. The forfeiture of the title of the owners is the purpose of the act. There could not be a clearer case of Legislative intention to punish retrospectively.

By the general law the person owning land at the time it should be assessed is not only liable for the taxes but remains bound there for; by this article the present owner's land is forfeited to the Com-

monwealth for the non-payment of taxes by the former owner. By the general law if the occupant of land pays the taxes thereon, he is entitled to recover of the owner the amount so paid with interest, and has a lien on the land therefor; by this article, the fact that the land has been listed for taxation and the taxes paid by the occupant, does not prevent the forfeiture as therein set out. By the general law land may be assessed retrospectively at any time not
320 later than five years but not to prejudice the rights of purchasers acquired in the meantime; by this article the purchaser is required to pay the taxes with interest and penalty. By the general law if the owner sells the land after the 1st. of February of the year in which the taxes are due and payable, it is the duty of the owner to pay the taxes; by this article the purchaser's title is forfeited if he does not pay them. By the general law where property has been sold for taxes, the owner may redeem it within two years; by this article the owner forfeits his title to the land if he fails to assess it and pay the taxes thereon as therein provided. By the general law if the owner fails to assess his property, it may be assessed retrospectively, but the taxes are then collected as other taxes; by this article the taxes are not collected as other taxes, but must be paid at once with interest and penalties to avoid a forfeiture of the title. By section four of this article, before the defendant may redeem, he must pay not only the amount of unpaid taxes charged, but those that ought to have been charged against those under whom he claims for fifty years preceding the filing of the counterclaim. No such provision is found in the general law relating to other property, and there is no provision in the general law for double taxation of the same property, and the pay-
321 ment of the taxes by each claimant where there are two claimants to it.

A reading of the article shows that it was a deliberate attempt on the part of the Legislature to deny the equal protection of the laws to the owners of the land titles referred to, and to provide as to the holders of these land titles an entirely different system from that provided for the holders of other species of property. It is therefore in my judgment void both under the Constitution of this State and the Constitution of the United States.

For these reasons I dissent from the opinion of the Court.

Wm. J. Hendrick, Hoppin & Berard, Hazelrigg, Chenault & Hazelrigg; Jno. H. Hendrick, R. L. Miller, for Appellant.

Hager & Stewart, T. H. Paynter, W. H. Wadsowrth, D. W. Baird, Z. T. Vinson, E. W. Hines, C. C. McChord, N. B. Hays, Att'y Gen'l; C. H. Morris, for Appellee.

322 Be it remembered that on the 13th day of July, 1908, there was filed in the office of the Clerk of the Court of Appeals, an Assignment of Errors, and which are hereto attached and are as follows:

323 Supreme Court of the United States.

No. 124.

EASTERN KENTUCKY COAL LANDS CORPORATION, Plaintiff in Error,
vs.
COMMONWEALTH OF KENTUCKY, Defendant in Error.

Assignment of Errors.

Eastern Kentucky Coal Lands Corporation, Plaintiff in Error in the above entitled cause, complains of the judgment rendered therein by the Court of Appeals of Kentucky, and for Error therein assigns the following:

First. The Court erred in affirming the judgments of the Pike County, Floyd County, Letcher County and Knott County Circuit Courts, the judgments of each of said Circuit Courts having been reviewed and affirmed on this Appeal.

Second. The Court erred in upholding the validity of Article III of the Act of March 15, 1906, of the Legislature of Kentucky:

(1) Because said Article III violates the Compact between Virginia and Kentucky of December 18, 1789.

(2) Because said Article III violates the provisions of the Constitution of Kentucky and the Constitution of the United States requiring due process of law.

(3) Because said Article III violates §10 of Article 1 of the Constitution of the United States, which declares that no State shall pass any bill of attainder or ex post facto law.

324 (4) Because said Article III violates §10 of Article I of the Constitution of the United States which provides that no State shall pass any law impairing the obligation of Contracts.

(5) Because said Article III violates the Fourteenth Amendment of the Constitution of the United States which provides that no State shall deprive any person of property without due process of law nor deny to any person within its jurisdiction the equal protection of the laws.

Third. Because that irrespective of the invalidity of said provisions of Article III of said Act this suit by the plaintiff herein against this defendant violates the aforesaid Sections, Article and Amendment of the Constitution of the United States because this defendant has complied with any and all (if any) of the provisions of said Revenue Act that are valid so far as the same are applicable to this defendant; if any of said provisions are valid with respect to this defendant; and this defendant has been guilty of no wrong and has not done or omitted to do any act which would forfeit this defendant's title or claim to any of said lands even if said provisions of said Article III of said Revenue Act were valid.

Fourth. Because said Article III is an act of spoliation and law-

less confiscation and is revolutionary and subversive of all constitutional and orderly government.

HOPPIN & BERARD,
JAMES H. HAZELRIGG,
WM. JACKSON HENDRICK,
Counsel for Plaintiff in Error.

Filed July 13, 1908.

Att:
NAPIER ADAMS, *C. C. A.*

325 And on said date there was filed in the Office of the Clerk of the Court of Appeals a Petition for a Writ of Error, and which is attached hereto and is as follows:

326 Court of Appeals of Kentucky.

No. 124.

EASTERN KENTUCKY COAL LANDS CORPORATION, Plaintiff in Error,
vs.
COMMONWEALTH OF KENTUCKY, Defendant in Error.

Petition for Writ of Error and Appeal.

The above named Eastern Kentucky Coal Lands Corporation conceiving itself ag-rieved by the decision made and judgment entered by the Court of Appeals of Kentucky in the cause of the above named plaintiff in error against the above named defendant in error in said Court of Appeals at its September Term 1907, to-wit, on December 20th, 1907, said decision and judgment being rendered in four cases heard together and between the same parties, said Court being the highest Court of the State of Kentucky and the court of last resort for the hearing and determination of said cause in which cause was drawn in question the validity of a statute of the State of Kentucky, viz, Article III of the Act of March 15th, 1906 of the Legislature of Kentucky upon the ground that it is repugnant to the Constitution of the United States, is violative of the compact between Kentucky and Virginia of December 18th, 1789, is violative of the law requiring due process of law, and violates the law prohibiting the
327 State from passing *ex post facto* laws, from passing laws impairing the obligation of contracts and for other reasons specified in the assignment of errors filed herewith, and under which Constitution of the United States and laws thereunder, the plaintiff in error claimed protection, but the benefit of which is denied to the said plaintiff in error by the decision aforesaid, now wherefore, it presents its petition and assignment of errors and prays that this appeal be allowed and a writ or error issue out of the Supreme Court of the United States, to said Court of Appeals of Kentucky to the end that the transcript of the record, proceedings and papers in said matter may be removed to the said Supreme Court of the United States

and the errors complained of may be examined and corrected and the judgment and decision aforesaid of said Court of Appeals be reviewed and reversed.

WM. JACKSON HENDRICK,
HOPPIN & BERARD,
J. H. HAZELRIGG,
Attorneys for Plaintiff in Error.

Filed Jul- 13, 1908.
NAPIER ADAMS, *C. C. A.*

328 And on said date there was filed in the Office of the Clerk of the Court of Appeals a Writ of Error from the Supreme Court of the United States, to the Court of Appeals of Kentucky, and allowed by the Chief Justice of the Court of Appeals of Kentucky, and which is attached hereto, and is as follows:

329 UNITED STATES OF AMERICA:

The President of the United States to the Honorable Judges of the Court of Appeals of Kentucky, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Appeals, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the suit between the Eastern Kentucky Coal Lands Corporation, appellant, and The Commonwealth of Kentucky, appellee, No. 124, wherein was drawn in question the validity of a statute or constitution of or an authority exercised under said State of Kentucky on the ground of their being repugnant to the Constitution or laws of the United States and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution of the United States and the decision was against the title, right, privilege or exemption specially set up or claimed under such clause of the said Constitution, a manifest error hath happened, to the great damage of the said Eastern Kentucky Coal Lands Corporation, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment therein be given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within thirty days from the date hereof, in said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct the error what of right and according to the laws and customs of the United States shall be done.

330 Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 11th day of July, in the year of our

Lord one thousand nine hundred and eight, and of the Independence of the United States of America the one hundred and thirty-third.

[Seal 6th Circuit Court, Eastern Ky. Dis., U. S. of America.]

CHAS. N. WIARD,
Clerk U. S. Circuit Court, Eastern District of Kentucky, at Frankfort,
By E. H. COLEMAN, *D. C.*

Allowed by:

ED. C. O'REAR,
Chief Justice of the Court of Appeals of Kentucky.

Filed July 13th, 1908.
Att:

NAPIER ADAMS, *C. C. A.*

331 And on said date there was filed in the office of the Clerk of the Court of Appeals a Writ of Error Bond and also a Power of Attorney from the American Surety Company of New York to William J. Hendrick, and which are in words and figures as follows, to-wit:

332 Court of Appeals of Kentucky.

No. 124.

EASTERN KENTUCKY COAL LANDS CORPORATION, Appellant,
vs.
COMMONWEALTH OF KENTUCKY, Appellee.

Know all men by these presents that Eastern Kentucky Coal Lands Corporation, principal, and the American Surety Company of New York, surety, are held and firmly bound unto the Commonwealth of Kentucky, in the sum of one thousand ($1,000) dollars, to be paid to the obligees herein; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our successors, heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 13th day of July, 1908.

Whereas the above named Eastern Kentucky Coal Lands Corporation hath prosecuted a writ of error from the Supreme Court of the United States to reverse the judgment rendered in the above entitled cause by the Court of Appeals of Kentucky:

Now, therefore, the condition of this obligation is such that
333 if the above-named Eastern Kentucky Coal Lands Corporation shall prosecute its said writ of error to effect and answer all

costs if it shall fail to make good its plea, then this obligation shall be void; otherwise the same shall be and remain in full force.

EASTERN KENTUCKY COAL LANDS CORPORATION.
AMERICAN SURETY COMPANY OF NEW YORK,
By WM. J. HENDRICK,
Attorney in Fact.

Sealed and delivered in the presence of and approved by:
ED. C. O'REAR,
Chief Justice of the Court of Appeals of Kentucky.

Filed July 13, 1908.
Att.:
NAPIER ADAMS, *C. C. A.*

334 American Surety Company of New York.

Capital $2,500,000.

Know all men by these presents:

That the American Surety Company of New York, a corporation of the State of New York, of No. 100 Broadway, in the City of New York, in said State, has made, constituted and appointed, and by these presents does hereby make, constitute and appoint Wm. J. Hendrick, of #2 Rector Street, New York, N. Y. its true, sufficient and lawful attorney, with full power and authority to make, execute and deliver, for it, in its name and in its behalf, as surety, a bond or undertaking as follows:

A bond for One Thousand Dollars ($1,000.00) on behalf of Eastern Kentucky Coal Lands Corporation on a writ of error from the Court of Appeals of Kentucky to the Supreme Court of the United States in the case of Eastern Kentucky Coal Lands Corporation against the Commonwealth of Kentucky, No. 124, hereby giving its said attorney full power and authority to do everything whatsoever requisite and necessary to be done for the purpose of making, executing and delivering such obligation as fully as the officers of said American Surety Company of New York could do if personally present, and hereby ratifying and confirming all that its
335 attorney shall lawfully do or cause to be done by virtue hereof, but reserving to itself full power of substitution and revocation.

In witness whereof, the said American Surety Company of New York has caused its corporate seal to be hereunto affixed and these presents to be duly executed by its proper officers at the City of Cincinnati, State of Ohio, on this 11th day of July, 1908.

AMERICAN SURETY COMPANY OF NEW YORK.
[SEAL.] By W. S. DIGGS, *Resident Vice-President.*

Attest:
E. P. MOORE,
Resident Assistant Sec'ry.

At a regular meeting of the Executive Committee of the Board of Trustees of the American Surety Company of New York, held at the office of the Company at No. 100 Broadway, in the City of New York, on the seventh day of November, 1906, the following resolution was adopted:

"Resolved, That one of the Resident Vice-Presidents and one of the Resident Assistant Secretaries of this Company at Cincinnati, in the State of Ohio, be and they hereby are authorized and empowered to make, execute and deliver, in behalf of the Company, unto such person or persons in the State of Kentucky as they
336 may select, its power of attorney constituting and appointing each such person its Attorney in Fact, with full power and authority to make, execute and deliver, for it, in its name and in its behalf, as surety, any particular bond or undertaking that may be required in the State of Kentucky, the nature of such bond or undertaking to be in each instance specified in such power of attorney."

STATE OF NEW YORK,
County of New York, ss:

I, F. B. Holdridge, Assistant Secretary of the American Surety Company of New York, hereby certify that I have compared the foregoing resolution with the original thereof, as recorded in the Minute Book of said Company, and that the same is a correct and true transcript therefrom and of the whole of said original resolution.

Given under my hand and the seal of the Company at the City of New York, this 15th day of November, 1906.

[SEAL.] F. B. HOLDRIDGE,
Assistant Secretary.

STATE OF OHIO,
County of Hamilton, ss:

337 On this day personally appeared before me, a Notary Public, in and for the County aforesaid, W. S. Diggs and E. P. Moore who, being duly sworn by me, did depose and say that they are respectively a Resident Vice-President and a Resident Assistant Secretary, at the City of Cincinnati, of the American Surety Company of New York; and they, as such Resident Vice-President and Resident Assistant Secretary, respectively, did thereupon acknowledge and deliver the foregoing instrument of writing as and for the act and deed of the American Surety Company of New York.

Witness my hand and seal this 11th day of July, 1908.

[SEAL.] JNO. P. RYAN,
Notary Public.

My commission expires M'ch 17, 1909.

Filed Jul- 13, 1908.

NAPIER ADAMS, *C. C. A.*

Form G 452 500 11-06.

23—223

338 And on said date there was filed in the Office of the Clerk of the Court of Appeals the Original Citation with proof of service endorsed thereon, and which is attached hereto and is as follows, to-wit:

339 UNITED STATES OF AMERICA:

The President of the United States to the Commonwealth of Kentucky, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the Court of Appeals of the State of Kentucky, wherein the Eastern Kentucky Coal Lands Corporation is plaintiff in error and you are defendant in error No. 124, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ mentioned, should not be corrected and why speedy justice should not be done *by* the parties in that behalf.

Witness the Honorable Edward C. O'Rear, Chief Justice of the Court of Appeals of Kentucky, this 13th day of July in the year of our Lord one thousand nine hundred and eight.

ED. C. O'REAR,
Chief Justice of the Court of Appeals of Kentucky.

I accept the service of this citation.
July 13, 1908. JAS. BREATHITT,
Attorney General of Kentucky.

Filed July 13, 1908.
Att.:
NAPIER ADAMS, *C. C. A.*

340 THE COMMONWEALTH OF KENTUCKY,
The Court of Appeals, sct:

Pursuant to a writ of Error issued out of the United States Circuit Court for the Eastern District of Kentucky on the 11th day of July 1908 and directed to the Court of Appeals of Kentucky and in obedience to the command thereof, I, Napier Adams, Clerk of the Court of Appeals of Kentucky, do herewith transmit to the Supreme Court of the United States a duly certified transcript of the record and all proceedings of the Court, in the within entitled cause, with all things concerning the same, together with the original writ of Error and citation, with acceptance of service thereof hereto attached.

In Testimony Whereof, I have hereunto subscribed my name, and attached my official seal. Done at the Capitol at Frankfort on this the 3rd day of Aug. A. D., 1908.

[Seal Kentucky Court of Appeals.]

NAPIER ADAMS,
Clerk Court of Appeals of Kentucky.

Endorsed on cover: File No. 21,288. Kentucky Court of Appeals. Term No. 223. The Eastern Kentucky Coal Lands Corporation, plaintiff in error, vs. The Commonwealth of Kentucky. Filed August 5, 1908. File No. 21,288.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1906.

No. [redacted] 48.

THE EASTERN KENTUCKY COAL LANDS CORPORATION, PLAINTIFF IN ERROR,

vs.

THE COMMONWEALTH OF KENTUCKY.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF KENTUCKY.

FILED AUGUST 5, 1906.

(21,239.)

(21,289.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 224.

THE EASTERN KENTUCKY COAL LANDS CORPORATION, PLAINTIFF IN ERROR,

vs.

THE COMMONWEALTH OF KENTUCKY.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF KENTUCKY.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 16, 1909.

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1 THE COMMONWEALTH OF KENTUCKY:

Pleas Before the Honorable the Court of Appeals at the Capitol at Frankfort, on the 20th Day of June, A. D. 1908.

EASTERN KENTUCKY COAL LANDS CORPORATION, Appellant,
vs.
COMMONWEALTH OF KENTUCKY, Appellee.

Appeal from Pike Circuit Court.

Be it remembered that on the 20th day of February, 1908, the appellant by its attorneys filed in the office of the Clerk of the Court of Appeals, a copy of the judgment herein, and which is in words and figures as follows to-wit:

2 Pike Circuit Court.

THE COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
EASTERN KENTUCKY COAL LANDS CORPORATION & C. B. HILLHOUSE, etc., Defendants.

Judgment.

This cause coming on to be heard, at the regular call of the Docket, at the regular February Term of the Pike Circuit Court, to-wit: February 14, 1908, whereupon came the plaintiff, by the Commonwealth's Attorney, and announced ready for trial; also came the defendants, Eastern Kentucky Coal Lands Corporation and C. B. Hillhouse, by counsel, and announced ready for trial.

Thereupon came the following jury, to-wit:

M. C. Thornbury, H. M. Smith, Calvin Runyon, Mont Bevins, Calvin Taylor, Bud Maynard, Jerry Smith, Ulysses Hatfield, Charley Barrett, Bart Owens, Russell Howard, and T. B. Campbell, lawful citizens, residents and house keepers of Pike county, and otherwise qualified as jurors, and being duly selected, summoned, empaneled and accepted, were sworn in the manner prescribed by law, thereupon the attorney for the commonwealth stated the case for the plaintiff and counsel for the Eastern Kentucky Coal Lands Corporation and C. B. Hillhouse then stated the case for the Defendants, A. E. Auxier the Attorney for non resident defendants being present.

3 Thereupon the Plaintiffs to maintain the issues upon its part introduced its evidence to the jury, at the close of which the defendants Eastern Kentucky Coal Lands Corporation and C. B. Hillhouse offered to read as evidence to the jury the entire record in the Pike County and Circuit courts in the matter of the application by said Eastern Kentucky Coal Lands Corporation to have

listed and have assessed the properties referred to; to the reading of which the Plaintiff objected, the court sustained the objections, and said defendants excepted.

The said defendants offering no other evidence and no evidence being offered on behalf of defendants constructively summoned the court instructed the jury in writing, and the jury after hearing the evidence introduced by the parties and the instructions of the court and the argument of the counsel retired and presently returned into the court the following verdict: endorsed upon the instructions:

We the jury agree and find for the Plaintiff and against all the defendants.

M. C. THORNSBURY,
One of the Jury.

And thereupon this cause is now submitted for judgment and the court being sufficiently advised upon the pleadings, exhibits, proof and verdict of the jury above set out, finds decrees, and adjudges that the defendants and each of them, and those by through and under whom they claim failed to list *their* assessment and taxation the lands in said petition and hereinafter described as of the 15th of September, 1901, and the 15th day of Sept. 1902, and the 15th day of September 1903, the 1st day of Sept. 1904, the 1st day of September 1905, and also failed to pay the taxes
4 charged and which should have been charged against them and those under whom they claim, as the owner and claimant thereof, upon said date for each and all of said years and said defendants, and each and all of them and those by through and under whom they claim are adjudged and decreed to be delinquent.

It is further ordered and adjudged and decre-d that the title and claim of each and all the defendants and those by through and under whom they claim to the lands in the petition and hereinafter described by through and under the patent and survey in the petition, and hereinafter described be and the same is now hereby forfeited and said title and claim thereto is now transferred to and vested in the commonwealth.

The patents and survey title and claim under which is hereby adjudged to be forfeited and adjudged vested in the commonwealth and lands therein described are as follows, to-wit:

I Tract.

That certain tract or parcel of land containing 7,537 acres by survey bearing date the 17th, day of April 1787, which was granted by the commonwealth of Virginia, to John Walker, Robert Johnson, and Ruebin Twimanby by letters patent bearing date the 16th, day of December 1789, a copy of which said patent marked exhibit No. I, is filed herewith as part hereof and which said tract of land now w-olely or partly in the county of Pike state of Kentucky but at the time of said survey in the county of Bourbon Sta-e of Virginia is, and in said survey and patent was described as follows:

lying and being in the county of Bourbon, on the south side of Big Sandy and bounded as followeth to-wit:

5 Beginning at two poplars and hickory on the bank of Sandy where the county line strikes said Sandy river, thence down Sandy north, 20 West 160 poles West 20 poles South 50 poles West 30 poles north 60 and west 40 poles, north 32, west 160 poles, north 85, west 160 poles, to the mouth of a branch, north 18, east 60 poles, north 55 west 80 poles, south 35, west 520 poles, to two ashes, sugar tree Lynn, leaving Sandy and running south, 45, west 1101¾ poles to two white oakes; thence south 45, east 1131 poles to a chestnut; north 45, east 1101¾ poles to the beginnign." Which said patent is recorded in the land office of ——— Book 12 of (Va.) Grants, page 354.

Tract 2.

That certain tract or parcel of land containing 4060 acres by survey bearing date the 16th day of April, 1787, which was granted by the Commonwealth of Va. to John Craig by letters, patent bearing date the 4th day of Feb. 1790, a copy of which said patent marked exhibit No. 2" is filed herewith as part hereof, and which said tract of land now wholly or partly in the County of Pike, State of Kentucky, but at the tim- of said survey, in the County of Bourbon, State of Va., is, *is* and in said survey and patent was described as follows:

Lying and being on the county of Bourbon, on the southwest side of Big Sandy, and bounded as followeth to-wit:

"Beginning at the lower side at the mouth of Craigs Creek on the bank of Sandy at a poplar and ash; thence down Sandy and binding thereon North 15, East 240 poles; North 85, West 100 poles;

South 42 west 92 poles; south 60, west 52 poles, south 73,

6 West 86 poles North 20, West 280 poles; North 56, West 360 poles; North 45, West 180 poles North 25, West 204 poles to two sugar trees; thence South 45, West 530 poles to a stake; thence North 45; East 541 poles to the beginning; which said patent is recorded in the land office of Kentucky in Book 12, of Va. Grants, page 352.

Tract III.

That certain tract or parcel of land containing 5,940 acres by survey bearing date the 18th day of April, 1787 which was granted by the Commonwealth of Va. to John Craig by letters patent, bearing date the 2nd day of Feb. 1790, a copy of which said patent marked "exhibit No. 3" is filed herewith as part hereof, and which said tract of land now wholly or partly in the County of Pike, State of Kentucky, but at the time of said survey in the County of Bourbon, State of Va., is, and in said survey, and patent was described as follows:

Lying and being in the County of Bourbon on the South west side of Big Sandy River and bounded as followeth to wit:

"Beginning at the lower corner on Sandy at said Walker's survey of 4060 acres at two sugar trees; thence down Sandy as it meanders North 35, East 114 poles; North 5, West 234 poles; North 25, West

160 poles; North 75, West 140 poles; North 40, West 212 poles to the mouth of Elkhorn; North 50 West 108 poles; North 65, West 170 poles; North 45, West 180 poles; North 60, West 80
7 poles to a walnut, sugar tree, hickory, and Lynn; thence South 45, West 672 poles to a white oak; thence south 45, East 1180 poles crossing Elkhorn to a stake corner to said Walker's 4060 acres survey; thence with the line of said survey North 45, East 530 poles to the beginning; which said patent is recorded in the land Office of Kentucky in Book 12, in (Va.) Grants, page 348.

Tract IV.

That certain tract or parcel of land containing 20,000 acres by survey, bearing date the 17th day of April, 1787, which was granted by the Commonwealth of Va. to Daniel Duvall and Charles Marshall by letters patent bearing date the 14th day of Dec., 1789, a copy of which said patent marked "Exhibit No. 4" is filed herewith as part her-of, and which said tract of land now wholly or partly in the County of Pike State of Kentucky, but at the time of said survey in the County of Bourbon state of Va., is, and in said survey and patent was described as follows:

"Lying and being in the County of Bourbon, on the waters of Big ——, and bounded as followeth, to wit:

"Beginning at the upper corner at the bank of Sandy of a survey of 4,060 acres made in the name of Merry Walker; said survey is the upper survey on Sandy that was made for said Walker by virtue of part of his entry of 162,518 acres entry that was not withdrawn to begin at the lower side of the mouth of Craigs
8 Creek at an ash and poplar; thence up Sandy with its meanders; South 26, east 160 poles North 68 east 160 poles; South 35, east 120 poles; to two ashes a sugar tree and lynn, this being the lower corner on Sandy of a survey made for John Walker & Co., that was located in the same place that John Fowler's entry was withdrawn from; thence with the line of said survey South 45, west 1191¾ poles to two white oaks; thence with another of his lines south 45 degrees, east 1131 poles to a chestnut tree; thence south 45 degrees, west 1969 poles to a stake; thence north 45 degrees west 1460 poles to two sugar trees in the line of the 40,518 acres that was withdrawn from the middle of the said Walker's entry; thence with a line of the same north 45 degrees, east to the corner of the 20,000 acres surveyed by said Walker, and with the line of said survey the same course to the corner of the first mentioned 4,060 acres survey, and with the line of the same the same course the whole amounting to 2,939¾ poles to the beginning which said patent is recorded in the Land Office of Kentucky, in Book 12 of (Va.) Grants, page 317.

Tract V.

That cerain tract or parcel of land containing 20,000 acres, by survey bearing date the 18th day of April, 1787, which was granted by Com'th of Va. to Richard Adams by letters patent bearing date the 24th day of Feb. 1790, a copy of which said patent, marked

Exhibit No. 5, is filed herewith as part hereof, and which said tract of land, now wholly or partly in the County of Pike, State of
9 Kentucky but at the time of said survey in the County of Bourbon, State of Virginia, is, and in said survey and patent was, described as follows:

"Lying and being in the County of Bourbon, on the waters of Big Sandy, and bounded as followeth, towit:

Beginning at the most westerly corner of Daniel Duvall's and Charles Marshall's survey of 20,000 acres at two sugar trees; thence with the line of the same, south 45 degrees, east 1460 poles to a stake; thence south 45 degrees west 2191¾ poles to three chestnut trees; thence north 45°, west 1460 poles to two sugar trees; thence north 45 degrees, east 2,191¾ poles to the beginning." Which said patent is recorded in the Land Office of Kentucky, in Book 14 of (Va.) Grants, page 384.

Tract VI.

That certain tract or parcel of land containing twenty thousand (20,000) acres, by survey bearing date the 19th day of April, 1787, which was granted by the Commonwealth of Virginia to John Craig, by letters patent bearing date the 4th day of February, 1790, a copy of which said patent, marked Exhibit "No. 6," is filed herewith as part hereof, and which said tract of land now wholly or partly in the County of Pike, State of Kentucky, but at the time of said survey in the County of Bourbon, State of Virginia, is, and in said survey and patent was, described as follows:

Lying and being in the County of Bourbon, on the waters of Big Sandy, and bounded as followeth, to wit:

10 "Beginning at a white oak, it being the West corner of said Walker's survey of 5,940 acres, and with the back line of said survey south 45 degrees, east 1180 poles to a 4060 acre survey of said Walker's and with the line back of said survey the same course 1200 poles to the south corner of said survey, two maples and poplar; thence South 45 degrees west 1344 poles to a sugar tree, poplar and walnut; thence north 45 degrees, west 2,380 poles to two red oaks; thence north 45 degrees, east 1,344 poles to the beginning;" which said patent is recorded in the Land Office of Kentucky, in Book 12 of (Va.) Grants, page 351.

Tract VII.

That certain tract or parcel of land containing 40418 acres, by survey bearing date the 15th day of March, 1788, which was granted by the Commonwealth of Kentucky to John May and David Ross, by letters patent bearing date the 11th day of April, 1794, a copy of which said patent, marked Exhibit "No. 7" is filed herewith as part hereof, and which said tract of land now wholly or partly in the County of Pike, State of Kentucky, but at the time of said survey in the County of Bourbon, State of Virginia, is, and in said survey and patent was, described as follows:

Lying and being in the County of Bourbon, on Shelby's Creek, a western branch of Sandy, and bounded as follows, to wit:

"Beginning at two red oaks, this being the west corner of
11 a survey of 20,000 acres, made the 19th day of April, 1787, for Merry Walker; thence south 45 degrees, east 2380 poles to a sugar tree, poplar, and walnut, said Walker's south corner; thence south 45 degrees west 2717 poles to two sugar trees, a poplar and lynn at the head of a spring; thence north 45 degrees west 1120 poles to a large Lick, the same course continued in all 2,380 poles, crossing several branches of Shelby creek to two chestnut oaks; thence north 45 degrees, east 2,717 poles crossing main Shelbys creek to the beginning;" which said patent is recorded in the Land Office of Kentucky, in Book 3 of Grants, page 514.

Tract VIII.

That certain tract or parcel of land, containing 5000 acres, by survey bearing date the 22 day of April, 1787, which was granted by the Commonwealth of Virginia to John Craig by letters patent bearing date the 4th day of February, 1790, a copy of which said patent marked "Exhibit No. 8." is filed herewith as part hereof, and which said tract of land now wholly or partly in the County of Pike, State of Kentucky, but at the time of said survey in the County of Bourbon, State of Virginia, is, and in said survey and patent was, described as follows:

Lying and being in the County of Bourbon, on the waters of Big Sandy river and bounded as followeth to wit:

"Beginning at two chestnut oaks being the west corner of the 40,518 acres that was withdrawn from the said entry; thence south
45 degrees, east 1,190 poles to a sugar tree; thence south
12 45 degrees, west 672 poles to a stake; thence north 45 degrees, west 1190 poles to two white oaks; thence north 45 degrees, east 672 poles to the beginning;" which said patent is recorded in the Land Office of Kentucky, in Book 12 of (Va.) Grants, page 351.

Tract IX.

That certain tract or parcel of land containing 5000 acres by survey bearing date the 23rd day of April, 1787, which was granted by the Commonwealth of Virginia to John Craig by letters patent bearing date the 2nd day of February, 1790; a copy of which said patent marked "Exhibit No. 9." is filed herewith as a part hereof, and which said tract of land now wholly or partly in the County of Pike, State of Kentucky, but at the time of said survey in the County of Bourbon, State of Virginia, is and in said survey and patent was described as follows:

Lying and being in the county of Bourbon, on the waters of Big Sandy river, and bounded as followeth to wit:

"Beginning at a sugar tree, the east corner of said Walker's survey of 5000 acres, and with the line of said survey south 45 degrees, west 672 poles to a stake; thence south 45 degrees, east 1,190 poles to two white oaks; thence north 45 degrees, east 672 poles to two sugar trees, a poplar, and lynn; thence north 45 degrees, west 1,120 poles to a large Lick, continued in all 1190 poles to the beginning;" which

said patent is recorded in the Land Office of Kentucky in Book 12 of (Va.) Grants page 350.

13 Tract X.

That certain tract or parcel of land containing 20,000 acres by survey bearing date the 24th day of April, 1787, which was granted by the Commonwealth of Virginia to John Craig by letters patent bearing date the 4th day of February 1790, a copy of which said patent marked "Exhibit No. 10," is filed herewith as part hereof, and which said tract of land now wholly or partly in the county of Pike, State of Kentucky, but at the time of said survey in the county of Bourbon, State of Virginia, is, and in said survey and patent was described as follows:

Lying and being in the County of Bourbon, on the waters of Big Sandy, and bounded as follows, to wit:

"Beginning at two white oaks, it being the west corner of said Walker's survey of 5000 acres, thence with said survey, south 45 degrees, east 1190 poles, crossing some of the branches of Shelby's creek to the west corner of another survey of 5000 acres in the name of said Walker, and with the line of said survey the same course 1190 poles to two white oaks; thence south 45 degrees, west 1,344 poles to two red oaks; thence north 45 degrees, west 2380 poles crossing some of the branches of Shelby's creek to two white oaks; thence north 45 degrees, east 1344 poles to the beginning;" which said patent is recorded in the Land Office of Kentucky, in Book 15 of (Va.) Grants page 211.

14 Tract XI.

That certain tract or parcel of land containing 14,280 acres, by survey bearing date the 13th day of April, 1787, which was granted by the Commonwealth of Virginia to Benjamin Robinson, Richard Young and John Robinson by letters patent bearing date the 21st day of January, 1792, a copy of which said patent marked "Exhibit No. 11," is filed herewith as part hereof, and which said tract of land now wholly or partly in the County of Pike, State of Kentucky, but at the time of said survey in the County of Bourbon, State of Virginia, is, and in said survey and patent was described as follows:

Lying and being in the County of Bourbon, on the Big Sandy River, and bounded as followeth to wit:

"Beginning at a walnit, sugar tree, hickory, and lynn, lower corner of an entry of 162,518 acres in the name of Merry Walker; thence with the lower line of said entry south 45 degrees, west 2,500 poles crossing Shelby creek to two white oaks; thence north 45 degrees, west 1024 poles to two white oaks; thence north 45 degrees, east 2,200 poles to three sugar trees on the bank of Sandy; thence up Sandy as it meanders south 246 poles, south 85, east 172 poles, north 70 degrees east 236 poles, south 20 degrees east 80 poles, south 35 degrees; west 140 poles; south 45 degrees, east 196 poles, south 30 degrees, east 160 poles; north 35 degrees, east 100 poles to the mouth of Shelby's creek, continued 180 poles further south 80

degrees, east 72 poles; south 60 degrees, east 160 poles to the beginning;" which said patent is recorded in the Land Office
15 of Kentucky, in Book 14, of (Va.) Grants, page 376.

Tract XII.

That certain tract or parcel of land containing 16000 acres, by survey bearing the 3rd day of March, 1787, which was granted by the Commonwealth of Virginia to John W. Eaglesworth and Richard Young by letters patent bearing date the 21 day of January, 1792, a copy of which said patent marked "Exhibit No. 12," is filed herewith as part hereof, and which said tract of land now wholly or partly in the County of Pike, State of Kentucky, but at the time of said survey in the County of Bourbon, state of Virginia, is, and in said survey and patent was described as follows:

Lying and being in the County of Bourbon, on the waters of Big Sandy river and bounded as followeth, to-wit:

"Beginning at two white oaks, the south corner of Benjamin Roberson and Richard Young and John Roberson survey of 14,280 acres, and in the line of Merry Walker's entry of 162,518 acres and with said Walker's line south 45 degrees, west 2,500 poles; crossing several small branches of Shelby's creek to two sugar trees; thence north 45 degrees, west 1,024 poles to two chestnut oaks; thence north 45 degrees, east 2,500 poles to two white oaks; thence south 45 degrees, east 1,024 poles to the beginning;" which said patent is recorded in the Land Office of Kentucky, in Book 14, of (Va.), grants, page 515.

16 Tract XIII.

That certain tract or parcel of land containing 10,000 acres by survey bearing date the 14th day of May, 1787, which was surveyed in the name of Mitchael Ryon, a copy of which said survey marked "Exhibit No. 13," is filed herewith as part hereof, and which said tract of land now wholly or partly in the County of Pike, State of Kentucky, but at the time of said survey in the County of Bourbon, State of Virginia, is, and in said survey was described as follows:

Lying and being in the County of Bourbon, on the waters of Big Sandy, and bounded as follows, to-wit:

"Beginning at two sugar trees being the south corner of I. Weaglesworth and Richard Young's survey of 16,000 acres in the line of Merry Walker's entry of a 162,518 acres, and with said Walker's line; south 45 degrees, west 1000 poles to a white oak; thence north 45 degrees; west 1,600 poles; to two chestnut trees; thence north 45 degrees, east 1000 poles to a white oak; thence south 45 degrees, east 576 poles to Weaglesworth and Young's west corner, and with their line same course continued in all 1,600 poles to the beginning"; which said survey is recorded in the Clerk's office of the County Court of Bourbon County, Kentucky, in Book "A" of surveys page 73.

Tract XIV.

That certain tract or parcel of land containing 15,246 acres by survey bearing date the first day of May, 1787, which was granted

by the Commonwealth of Virginia to William Roberson, Ben-
17 jamin Roberson, Michael Roberson Jr., John Roberson, Mary McGee, Betsy Robinson, Mitchael Robinson, and Henry Roberson, James Roberson, John Robinson, William McGee, and Thomas McGee by letters patent bearing date the 21st day of January, 1792, a copy of which said patent marked "Exhibit No. 14," is filed herewith as part hereof, and which said tract of land now wholly or partly in the County of Pike, State of Kentucky, but at the time of said survey in the County of Bourbon State of Virginia, is, and said survey and patent was described as follows:

Lying and being in the County of Bourbon, on the waters of Big Sandy, and bounded as followeth to wit:

"Beginning at a sugar tree, lower corner of Benjamin Robinson, and Company's survey of 14,280 acres; thence with the lower line of said survey, south 45 degrees, west 2,200 to their west corner; two white oaks; thence north 45 degrees, west 1,108 and 8 poles to two sugar trees; thence north 45 degrees east 2,200 poles to a poplar; thence south 45 degrees, east 1108 and 8 poles to the beginning"; which said patent is recorded in the Land Office of Kentucky, in Book 14 of (Va.), Grants, page 379.

Tract XV.

That certain tract or parcel of land containing 5,000 acres, by survey bearing date the 5th day of May, 1787, which was granted by the Commonwealth of Kentucky to Preeson Boudain and Richard Young by letters patent bearing date the 8th day of March, 1793, a copy of which said patent marked "Exhibit No. 15" is filed
18 herewith as part hereof and which said tract of land now wholly or partly in the County of Pike State of Kentucky, but at the time of said survey in the County of Bourbon, state of Virginia, is, and in said survey and patent was described as follows:

Lying and being in the County of Bourbon, on the waters of Big Sandy River, and bounded as followeth to-wit:

"Beginning at two white oaks, it being the west corner of Benjamin Robinson and Co.'s survey of 14,280 acres and corner to Weaglesworth and Young's survey of 16,000 acres thence with said Weaglesworth and Young's line; south 45 degrees west 1,300 poles to a sugar tree; thence north 45 degrees west 615 3/10 poles to a poplar; thence north 45 degrees, east 1300/ poles crossing some small branches to two white oaks in the line of William Robinson & Company's survey of 15246 acres; thence with the line of said survey, south 45 degrees, east 615 3/10 poles to the beginning"; which said patent is recorded in the Land Office of Kentucky, in Book 3 of Grants, page 34.

Tract XVI.

That certain tract or parcel of land containing 23,250 acres by survey bearing date the 15th day of Sept., 1788 which is granted by the Commonwealth of Virginia to James Garrard, by letters patent bearing date the 19th day of October, 1789, a copy of which said patent marked "Exhibit No. 16", is filed herewith as part hereof, and which said tract of land now wholly or partly in the County of

Pike, State of Kentucky, but at the time of said survey in the County of Bourbon, State of Virginia, is, and in said survey and
19 patent was described as follows:

Lying and being in the County of Bourbon, on the west side of Big Sandy, and bounded as followeth to wit:

"Beginning at a poplar, the north corner of William Roberson and Company's survey of 15,246 acres; thence south 45 degrees west 2200 poles to said Robertson and Company west corner at two sugar trees; thence north 45 degrees, west 1480 poles to a poplar, ash and sugar tree; thence north 45 degrees east 2,020 poles to three buckeyes, six sugar trees and two walnut trees standing on the bank of Sandy immediately below the mouth of Bear creek; thence up Sandy and binding thereon 1,250 poles on a reduced line to a buckeye and sugar tree; thence leaving Sandy and running south 3 degrees, west 530 poles to the beginning"; which said patent is recorded in the Land Office of Kentucky, in Book 12 of (Va.), Grants, page 339.

Tract XVII.

That certain tract or parcel of land containing 30,000 acres by survey bearing date the 19th day of March, 1788, which was granted by the Commonwealth of Virginia to Michael O'Meally by letters patent bearing date the 20th day of Feb. 1792, a copy of which said patent marked "Exhibit No. 17," is filed herewith as part hereof, and which said tract of land now wholly or partly in the County of Pike, State of Kentucky, but at the time of said survey in the County of Bourbon, State of Virginia, is, and in said survey and patent was described as follows:

Lying and being in the County of Bourbon (formerly
20 Fayette in the District of Kentucky) on the Louvisa river, a fork of Sandy, the waters of Ohio, and bounded as followeth, to wit:

"Beginning at the upper corner of John Walker and Company's survey of 7,537 acres at two poplars and an ash on the west bank of said river, and running down meanders of said river and binding on the same 1770 poles to a poplar and ash, the upper corner of Merry Walker's survey of 4,060 acres; thence north 45 degrees, east 3,488 poles crossing the river and a large branch to an ash and sugar tree; thence south 45 degrees east 1,460 poles to two white oaks; thence south 45 degrees, west 3,287 poles crossing a large creek and the river to the beginning"; which said patent is recorded in the Land Office of Kentucky, in Book 14 of (Va.) grants, Page 396.

Tract XVIII.

That certain tract or parcel of land containing 30,000 acres by survey bearing date the 19th day of March, 1788 which was granted by the Commonwealth of Virginia to Mitchael O'Meally by letters patent bearing date the 20th day of Feb., 1792, a copy of which said patent marked "Exhibit No. 18" is filed herewith as part hereof, and which said tract of land now wholly or partly in the County of Pike, State of Kentucky, but at the time of said survey in the County of

Bourbon, State of Virginia, is, and in said survey and patent was described as follows:

Lying and being in the County of Bourbon, and District of Kentucky, on the Louvisa fork of Sandy river, the waters of the
21 Ohio, and bounded as followeth, to wit:

"Beginning at the lower end of said Smith's 30,000 acres survey No. 1 at a poplar and ash, corner to a survey and to a survey made in the name of Merry Walker of 4,060 acres, and on the west bank of said river in the bottom and running down the meanders of Sandy on the west side and binding on the same 2,950 poles to a walnut, sugar tree, hickory and lynn, on the lower corner of said Walker's survey of 5,940 acres, and runneth thence north 45 degrees, east 1920 poles crossing said river to two sugar trees; thence south 45 degrees, east 2/380 poles to a white oak; thence south 45 degrees west 2,116 poles crossing a large creek and a river to the beginning"; which said patent is recorded in the Land Office of Kentucky, in book 14, of (Va.) Grants, page 392.

Tract XIX.

That certain tract or parcel of land containing 5,000 acres by survey bearing date the 20th day of March, 1788 which was granted by the Commonwealth of Virginia to Mitchael O'Meally by letters patent bearing date the 20th day of Feb., 1792, a copy of which said patent marked "Exhibit No. 19," is filed herewith as part hereof, and which said tract of land now wholly or partly in the County of Pike, State of Kentucky, but at the time of said survey in the County of Bourbon, State of Virginia, is, and in said survey and
22 patent was described as follows:

Lying and being in the County of Bourbon and District of Kentucky, in the forks of Main Sandy river and the Louvisa on John's Creek, a branch of Louvisa river, and bounded as followeth, to wit:

Beginning at two beech trees, and maple corner to said Smith's survey No. 7; thence south 60, west 800 poles to two beech trees and maple; thence north 30 degrees west 1000 poles to a beech and black oak, corner to said Smith's survey No. 1, and with the line of same, north 60 degrees, east 800 poles to a walnut and black oak, corner to said Smith's surveys No. 1 and 7, and with a line of the seventh south 30 degrees east 1,000 poles to the beginning;" which said patent is recorded in the Land Office of Kentucky, in book 14, of (Va.) grants, page 584.

Tract XX.

All that part that is situated in Pike County, Kentucky, west of the top of the ridge that divides the waters of Louvisa fork from the waters of Tug Fork of Sandy river of that certain tract or parcel of land containing 150,000 acres by survey bearing date the 17th day of Dec., 1795, which was granted by the Commonwealth of Virginia to John Henry and Alexandria Smith by letters patent bearing date the 20th day of August 1796, a copy of which said patent marked "Exhibit No. 20" is filed herewith as part hereof and which said

tract of land now wholly or partly in the County of Pike, State of Kentucky, but in said survey and patent stated to be in the
23 County of Russell, State of Virginia, is, and in said survey and patent was described as follows:

Lying and being in the County of Russell, and is bounded as followeth, to wit:

"Beginning on the east bank of Great Sandy river at the junction of Russell and Louvisa branches which form it at a sycamore tree marked as a corner and running thence up the Louvisa or northeasterly branch on the east side binding thereon according to its several courses and meanders 2,100 poles to a buckeye, a sugar tree, and large poplar tree standing on the bank at the lower end of a bottom some distance below the *the* mouth of the first branch that empties below Grapevine on the same side, which tree was marked as a corner by Henry Smith in February, 1795, and running thence south 63 degrees, east 4,210 poles to pointers; thence north 2,960 poles to a stake to a line of Wm. Merritt's survey of 100,000 acres with the lines thereof; north 63 degrees, west 2,000 poles to a white oak and north 45 degrees, east 3,050 poles to an ash, a buckeye, a poplar and cluster of sycamore trees standing on the bank of that branch of Sandy which separates Russell from Wythe and Kenhava Counties about a computed mile above the mouth of a creek which empties on the South side called Blackbury, which were marked by Henry Smith at the time aforesaid and since by French Mason as *teh* lower corner to Merritt's said survey and one of the sycamores with the letters "F. M."; thence down the last mentioned branch of Sandy, binding thereon the South side according to its several courses and meanders 8,076 poles to an elm birch, marked
24 as a corner standing on the south bank of the said branch 49 poles below the mouth of a creek that empties thereinto on the south side, called Comforts Creek, which trees are also a corner to survey made for Alexander Walcott; thence with a line of the last mentioned survey; south 13 degrees, west 7480 poles to the beginning;" which said patent is recorded in the Land Office of Virginia, in Book 34, page 505.

(21.)

All that part that is situated in Pike County, Kentucky, west of the top of the ridge that divides the waters of Levisa Fork from the waters of Tug Fork of Sandy river, of that certain tract or parcel of land containing 300,000 acres, by survey bearing date the 28th day of November, 1795, which was granted by the Commonwealth of Virginia to Benjamin Haskell by letters patent bearing date the 16th day of February, 1797, a copy of which said patent, marked "Exhibit No. 21" is filed herewith as part hereof, and which said tract of land, now wholly or partly in the County of Pike, State of Kentucky, but in said survey and patent said to be in the County of Russell, State of Virginia, is, and in said survey and patent was described as follows:

Lying and being in the County of Russell, adjoining Jesse Evan's survey of 180,000 acres, and is bounded as followeth, to wit:

"Beginning at a chestnut and chestnut oak, the second corner to Jesse Evan's said survey which stand 3,942 poles north of the head of Stock Creek at which a lynn and three poplars marked as a corner stands, and with lines of the aforesaid survey N. 57 degrees, E. 3,216 poles to a maple and two chestnuts marked "J. G.", N. 11 degrees, E. 7,160 poles to a white oak and Spanish oak marked "J. G.", N. 67 degrees, E. 2,634 poles passing a corner of said Evan's survey *at* 1,400 poles to three poplars and a sugar tree, corner to Richard Smith's survey of 200,000 acres; N. 52 degrees, W. 8,220 poles to a red oak and two beeches marked "J. G.", and thence S. 14,780 poles to the beginning;" which said patent is recorded in the Land Office of Virginia, in Book 38, page 1.

Tract XXII.

That certain tract of parcel of land containing 8,000 acres, by survey bearing date the 25th day of April, 1789, which was granted by the Commonwealth of Kentucky to George Lewis, by letters patent bearing date the 16th day of October, 1795, a copy of which said patent, marked "Exhibit No. 22," is filed herewith as part hereof, and which said tract of land, now wholly or partly in the County of Pike, State of Kentucky, but at the time of said survey in the County of Bourbon, State of Virginia, is, and in said survey and patent was, described as follows:

Lying and being in the County of Bourbon, on the waters of Big Sandy, and bounded as followeth, to wit:

"Beginning at a white oak, corner to Michael Ryan's survey of 10,000 acres in Merry Walker's line; thence North 45 degrees, west 1,600 poles with said Ryon's line to his corner, two chestnut trees; thence south 45 degrees, west 800 poles to a sugar tree, corner to said Grant's 12,058¾ acres survey; thence with the line of said survey; south 45 degrees, east 1,600 poles to the beginning" corner of said Grant's 12,058¾ acre survey at two white oaks in Merry Walker's line; thence with his line, north 45 degrees, east 800 poles to the beginning;" which said patent is recorded in the Land Office of Kentucky, in book 5, of Grants, page 213.

All other questions not herein specifically adjudged, are reserved for further adjudication.

To this judgment, the defendants, Eastern Kentucky Coal Lands Corporation and C. B. Hillhouse, object and except.

Pike Circuit Court.

STATE OF KENTUCKY,
County of Pike, set:

I, J. B. Polley, clerk of Pike Circuit —, do hereby certify that the above and foregoing is a true and correct copy of the judgment as called for wherein the Commonwealth of Kentucky is Plaintiff

and the Eastern Kentucky Coal Lands Corporation &c., are Defendants as appears to me of record in my said office.

Witness my hand this Feb. 27th, 1908.

J. B. POLLEY, *Clk.*
By A. D. CLINE, *D. C.*

Fee for copy $7.20.

27 and with said copy of judgment there was filed a statement and which is in words and figures as follows, to wit:

Kentucky Court of Appeals.

EASTERN KENTUCKY COAL LANDS CORPORATION, Appellant,
vs.
COMMONWEALTH OF KENTUCKY, Appellee.

Statement.

The judgment appealed from was rendered by the Pike Circuit Court at its February term 1908 on the 14th day of February 1908, and will be found on page — of the transcript hereafter to be filed, copy of which is filed with this statement.

The Clerk of the Court of Appeals will issue summons on this appeal to the counties of Franklin and Pike.

JAMES H. HAZELRIGG,
WM. JACKSON HENDRICK,
Counsel for Appellant.

28 And on said statement an appeal was granted by the Clerk of the Court of Appeals, and a summons and copy on same issued to the counties of Franklin and Pike respectively and which are in words and figures as follows to-wit:

Summons on Appeal.

The Commonwealth of Kentucky to the Sheriff of Pike County, Greeting:

We command you to summon Commonwealth of Kentucky to appear before the Judges of the Court of Appeals of Kentucky, at the Capitol in Frankfort on the first day of their next April Term, to show cause, if any it can, why a judgment obtained by it in the Pike Circuit Court against Eastern Kentucky Coal Lands Corporation at its February Term, 1908, should not be reversed for the errors therein contained; as we from its complaint are informed, and have then and there this writ.

Witness, Napier Adams, Clerk of said Court, at the Capitol in Frankfort, this 29 day of February, 1908.

NAPIER ADAMS, *C. C. A.*
—— ——, *D. C.*

29 On the back of said summons appear the following endorsements:

Court of Appeals. Eastern Ky. Coal Land Corporation vs. Com'th. Summons. One copy. To April term, 1908. Pike County.

On said summons appears the following return:

Executed the within summons on Com'th of Ky. by delivering a true copy thereof to J. F. Butler, Com'w'th Att'y for Pike Co., this 9 day of March, 1908.

JAS. A. SCOTT, *S. P. C.*
DAN SYCK, *D. S.*

30 The summons issued to Franklin County is as follows:

Summons on Appeal.

The Commonwealth of Kentucky to the Sheriff of Franklin County, Greeting:

We command you to summon Commonwealth of Kentucky to appear before the Judges of the Court of Appeals of Kentucky, at the Capitol in Frankfort on the first day of their next April Term, to show cause, if any it can, why a judgment obtained by it in the Pike Circuit Court against Eastern Kentucky Coal Land Corporation at its February Term, 1908, should not be reversed for the errors therein contained; as we from its complaint are informed, and have then and there this writ.

Witness, Napier Adams, Clerk of said Court, at the Capital in Frankfort, this 29 day of February, 1908.

NAPIER ADAMS, *C. C. A.*
——— ———, *D. C.*

31 On the back of said summons to Franklin County appear the following endorsements to-wit:

Court of Appeals. Eastern Kentucky Coal Lands Corporation vs. Com'th. Summons. On- copy. To April Term, 1908. Franklin County.

The following return appears on the back of the said summons:

"I accept service of this summons, this February 29th, 1908.

JAS. BREATHITT,
Att'y General."

32 An- afterwards on the 7th day of March, 1908, the appellant by its attorney filed in the office of the Clerk of the Court of Appeals a transcript of the record herein, and which is in words and figures as follows to-wit:

33 COMMONWEALTH OF KENTUCKY,
Pike Circuit Court:

Petition in Equity.

COMMONWEALTH OF KENTUCKY, Plaintiff,
against
EASTERN KENTUCKY COAL LANDS CORPORATION, a Corporation Created under the Laws of the State of Virginia; Charles B. Hillhouse, J. C. Twyman, Courtland Van Camp, Isaac L. Casey, Alfred Elmer Mills, Union Trust Company of Philadelphia, a Corporation Organized and Existing under and by Virtue of the Laws of the State of Pennsylvania; John V. Le Moyne, Hall J. Howe, Oliver T. Crane, Ebenezer Melvin, Eastern Kentucky Development Company, a Corporation Organized and Existing under and by Virtue of the Laws of New York; William Nelson Woodruff, Charles Seldon, George H. Taylor, Vidantees B. Ed-
34 wards, Trustee; Robert Fletcher Rogers, Thomas Dillen, Walter L. Richards, James W. Linville, Samuel Fox, Maria Fox, Elizabeth Lansdale, Robert Walsh, Joseph Walsh, A. M. Walsh, Isabelle Walsh, E. Walsh, Mariah Walsh, Thursa Walsh, Fannie Walsh, Oliver Walsh, Taylor Walsh, Hiram S. McConnell, John P. Sherwood, Mary E. Rinehart, Odella Craig, Mary A. Craig, Cordellia F. Combs, Mary H. Craig, Lide H. Craig, Rose K. Craig, Rose E. Craig, G. G. Hughes, W. N. Pickerill, W. T. Craig, Joseph D. Craig, A. W. McClure, Sallie Craig, E. T. Craig, and the Unknown Defendant and Unknown Defendants, the Unknown Owner and Unknown Owners, Unknown Claimant and Unknown Claimants of a Certain Tract or Tracts of Land, or a Part Thereof, or Interest Therein, by, Through, or under the Survey and Patents Hereinafter and in the Caption Hereof Stated, which Said Tracts of Land Lie Wholly or Partly within the County of Pike and State of Kentucky, and are More Fully
35 Described in the Following Surveys and Patents, To wit:

1st. That certain tract or parcel of land, containing 7,537 acres, by survey bearing date the 17th day of April, 1787, granted by the Commonwealth of Virginia to John Walker, Robert Johnson and Reuben Rwyman, by letters patent bearing date the 16th day of December, 1789, at the time of said survey in the County of Bourbon and State of Virginia, and in said patent stated to be in said County, which said patent is recorded in the Land Office of Kentucky, in Book 12 of (Va.) Grants, page 354.

2nd. That certain tract or parcel of land containing 4,060 acres, by survey bearing date the 18th day of April, 1787, granted by the Commonwealth of Virginia to John Craig, by letters patent bearing date the 4th day of February, 1890, at the time of said sur-
36 vey lying in the County of Bourbon, State of Virginia, and in said patent stated to be in said County, which said patent is recorded in the Land Office of Kentucky, in Book 12 of (Va.) Grants, page 352.

3rd. That certain tract or parcel of land containing 5,940 acres, by survey bearing date the 18th day of April, 1787, granted by the Commonwealth of Virginia to John Craig, by letters patent bearing date the 2nd day of February, 1790, at the time of said survey lying in the County of Bourbon, State of Virginia, and in said patent stated to be in said County, which said patent is recorded in the Land Office of Kentucky, in Book 12 of (Va.) Grants, page 348.

4th. That certain tract or parcel of land, containing 20,000 acres, by survey bearing date the 17th day of April, 1787, granted by the Commonwealth of Virginia to Daniel Duvall and Charles Marshall, by letters patent bearing date the 14th day of December, 1789, at the time of said survey lying in the County of Bourbon, State of Virginia, and in said patent stated to be in said County,
37 which said patent is recorded in the Land Office of Kentucky, in Book 12 of (Va.) Grants, page 317.

5th. That certain tract or parcel of land, containing 20,000 acres, by survey bearing date the 18th day of April, 1787, granted by the Commonwealth of Virginia to Richard Adams, by letters patent bearing date the 24th day of February, 1790, at the time of said survey lying in the County of Bourbon, State of Virginia, and in said patent stated to be in said County, which said patent is recorded in the Land Office of Kentucky, in Book 12 of (Va.) Grants, page 384.

6th. That certain tract or parcel of land, containing 20,000 acres, by survey bearing date the 19th day of April, 1787, granted by the Commonwealth of Virginia to John Craig, by letters patent bearing date the 4th day of February, 1790, at the time of said survey lying in the County of Bourbon, State of Virginia, and in said patent stated to be in said County, which said patent is recorded in
38 the Land Office of Kentucky, in Book 12 of (Va.) Grants, page 351.

7th. That certain tract or parcel of land, containing 40,418 acres, by survey bearing date the 15th day of March, 1788, granted by the Commonwealth of Kentucky to John May and David Ross, by letters patent bearing date the 11th day of April, 1794, at the time of said survey lying in the County of Bourbon, State of Virginia, and in said patent stated to be in the County of Bourbon, State of Kentucky, which said patent is recorded in the Land Office of Kentucky, in Book 3 of Grants, page 514.

8th. That certain tract or parcel of land, containing 5,000 acres, by survey bearing date the 22nd day of April, 1787, granted by the Commonwealth of Virginia to John Craig, by letters patent bearing date the 4th day of February, 1790, at the time of said sur-
39 vey lying in the County of Bourbon, State of Virginia, and in said patent stated to be in said County, which said patent is recorded in the Land Office of Kentucky, in Book 12 of (Va.) Grants, page 351.

9th. That certain tract or parcel of land, containing 5,000 acres, by survey bearing date the 23rd day of April, 1787, granted by the Commonwealth of Virginia to John Craig, by letters patent bearing date the 2nd day of February, 1790, at the time of said survey

lying in the County of Bourbon, State of Virginia, and in said patent stated to be in said County, which said patent is recorded in the Land Office of Kentucky in Book 12 *od* (Va.) Grants, page 350.

10th. That certain tract or parcel of land, containing 20,000 acres, by survey bearing date the 24th day of April, 1787, granted by the Commonwealth of Virginia to John Craig, by letters patent bearing date the 4th day of February, 1790, at the time of said survey lying in the County of Bourbon, State of Virginia, and in said patent stated to be in said County, which said patent is recorded in the Land Office of Kentucky, in Book 15 of (Va.) Grants, page 211.

11th. That certain tract or parcel of land, containing 14,280 acres, by survey bearing date the 13th day of April, 1787, granted by the Commonwealth of Virginia to Benjamin Robinson, Richard Young and John Robinson, by letters patent bearing date the 21st day of January, 1792, at the time of said survey lying in the County of Bourbon, State of Virginia, and in said patent stated to be in said County, which said patent is recorded in the Land Office of Kentucky, in Book 14 of (Va.) Grants, page 376.

12th. That certain tract or parcel of land, containing 16,000 acres, by survey bearing date the 3rd day of May, 1787, granted by the Commonwealth of Virginia to John Weaglesworth and Richard Young, by letters patent bearing date the 21st day of January, 1792, at the time of said survey lying in the County of Bourbon, State of Virginia, and in said patent stated to be in said County, which said patent is recorded in the Land Office of Kentucky, in Book 14 of (Va.) Grants, page 515.

13th. That certain tract or parcel of land, containing 10,000 acres, by survey bearing date the 14th day of May, 1787, surveyed in the name of Michael Ryon, which said survey is recorded in the records of the County Clerk's Office of Bourbon County, Kentucky, in Surveyor's Book "A", page 73, which said land at the time of said survey was in the County of Burbon, State of Virginia.

14th. That certain tract or parcel of land containing 15,246 acres, by survey bearing date the 1st day of May, 1787, granted by the Commonwealth of Virginia to William Robinson, Michael Robinson, Jr., John Robinson, Benjamin Robinson, Mary McGee, Betsy Robinson, Michael Robinson, Henry Robinson, James Robinson, John Robinson, William McGee and Thomas McGee, by letters patent bearing date the 21st day of January, 1792, at the time of said survey lying in the County of Bourbon, State of Virginia, and in said patent stated to be in said County, which said patent is recorded in the Land Office of Kentucky, in Book 14 of (Va.) Grants, page 379.

15th. That certain tract or parcel of land, containing 5,000 acres, by survey bearing date the 5th day of May, 1787, granted by the Commonwealth of Kentucky to Preeson Boudain and Richard Young, by letters patent bearing date the 8th day of March, 1793, at the time of said survey lying in the County of Bourbon, State of Virginia, and in said patent stated to be in the County of Bourbon,

State of Kentucky, which said patent is recorded in the Land Office of Kentucky, in Book 3 of Grants, page 34.

43 16th. That certain tract or parcel of land, containing 23,250 acres, by survey bearing date the 15th day of September, 1788, granted by the Commonwealth of Virginia to James Garrard, by letters patent bearing date the 19th day of October, 1789, at the time of said survey lying in the County of Bourbon, State of Virginia, and in said patent stated to be in said County, which said patent is recorded in the Land Office of Kentucky, in Book 12 of (Va.) Grants, page 339.

17th. That certain tract or parcel of land, containing 30,000 acres, by survey bearing date the 19th day of March, 1788, granted by the Commonwealth of Virginia to Michael O'Mealy, by letters patent bearing date the 20th day of February, 1792, at the time of said survey lying in the County of Bourbon, State of Virginia, and in said patent stated to be in said County, which said patent is

44 recorded in the Land Office of Kentucky, in Book 14 of (Va.) Grants, page 396.

18th. That certain tract or parcel of land, containing 30,000 acres, by survey bearing date the 19th day of March, 1788, granted by the Commonwealth of Virginia to Michael O'Mealy, by letters patent bearing date the 20th day of February, 1792, at the time of said survey lying in the County of Bourbon, State of Virginia, and in said patent stated to be in said County, which said patent is recorded in the Land Office of Kentucky, in Book 14 of (Va.) Grants, page 392.

19th. That certain tract or parcel of land, containing 5,000 acres, by survey bearing date the 20th day of March, 1788, granted by the Commonwealth of Virginia to Michael O'Mealy, by letters patent bearing date the 20th day of February, 1792, at the time of said survey lying in the County of Bourbon, State of Virginia, and in said patent stated to be in said County, which said patent

45 is recorded in the Land Office of Kentucky, in Book 14 of (Va.) Grants, page 584.

20th All that part that is situated in Pike County, Kentucky, West of the top of the ridge that divides the waters of Levisa Fork from the waters of Tug Fork of Sandy River, of that certain tract or parcel of land containing 150,000 acres, by survey bearing date the 17th day of December, 1795, granted by the Commonwealth of Virginia to John Henry and Alexander Smyth, by letters patent bearing date the 20th day of August, 1796, in said survey and patent stated to be in the County of Russell, State of Virginia, which said patent is recorded in Land Office of Virginia, in Book 34, page 505.

21st. All that part that is situated in Pike County, Kentucky, West of the top of the ridge that divides the waters of Levisa Fork from the waters of Tug Fork of Sandy River, of that certain tract or parcel of land, containing 300,000 acres, by survey

46 bearing date the 28th day of November, 1795, granted by the Commonwealth of Virginia to Benjamin Haskell, by letters patent bearing date the 16th day of February, 1797, which

said land in said survey and patent was stated to be in the County of Russell, State of Virginia and which said patent is recorded in the Land Office of Virginia, in Book 38 page 1.

22nd. That certain tract or parcel of land, containing 8,000 acres, by survey bearing date the 25th day of April, 1789, granted by the Commonwealth of Kentucky to George Lewis, by letters patent bearing date the 16th day of October, 1795, at the time of said survey lying in the County of Bourbon, State of Virginia, and in said patent stated to be in the County of Bourbon, State of Kentucky, which said patent is recorded in the Land Office of Kentucky, in Book 5 of Grants, page 213, Defendants.

The plaintiff, Commonwealth of Kentucky, by J. F.
47 Butler, Commonwealth's Attorney in and for the Twenty-fourth Circuit Court Judicial District of Kentucky, composed of the counties of Pike, Martin and Johnson, and for the Pike Circuit Court therein, duly elected, qualified and acting as such, states:

That heretofore the Commonwealth of Virginia, while the land hereinafter described was in the Commonwealth of Virginia, caused surveys thereof to be made, and the said Commonwealth of Virginia or the Commonwealth of Kentucky, as hereinafter stated, caused patents therefor to issue, and to be delivered to, and thereby granted unto, the persons hereinafter respectively stated, the tracts of land in said grants and hereinafter described, which said grants dated, for the number of acres, and issued to the persons, and the land therein described are, as follows, viz:

1st tract.

That certain tract or parcel of land, containing 7,537 acres, by survey bearing date the 17th day of April, 1787, which was granted by the Commonwealth of Virginia to John Walker, Robert Johnson and Reuben Twyman, by letters patent bearing date the 16th day of December, 1789, a copy of which said patent, marked Exhibit No. 1, is filed herewith as part hereof, and which said tract
48 of land, now wholly or partly in the County of Pike, State of Kentucky, but at the time of said survey in the County of Bourbon, State of Virginia, is, and in said survey and patent was, described as follows:

Lying and being in the County of Bourbon, on the South side of Big Sandy, and bounded as followeth, towit: Beginning at two poplars and hickory, on the bank of Sandy, where the County line strikes said Sandy River, thence down Sandy North 20 West 160 poles, West 20 poles, South 50 poles, West 30 poles, North 60 West 40 poles, North 32 West 160 poles, North 85 West 160 poles to the mouth of a branch, North 18 East 60 poles, North 55 West 80 poles, South 35 West 520 poles, to two ashes, a sugar tree and lynn, leaving Sandy and running South 45 West 1,101¾ poles to two white oaks, thence South 45 East 1,131 poles to a chestnut, North 45 East 1,101¾ poles to the beginning; which said patent is recorded in the Land Office of Kentucky, in Book 12 of (Va.) Grants, page 354.

2nd tract.

That certain tract or parcel of land, containing 4,060 acres, by survey bearing date the 18th day of April, 1787, which was granted by the Commonwealth of Virginia to John Craig, by letters patent
bearing date the 4th day of February, 1790, a copy of which
49 said patent, marked Exhibit No. 2, is filed herewith as part hereof, and which said tract of land, now wholly or partly in the County of Pike, State of Kentucky, but at the time of said survey in the County of Bourbon, State of Virginia, is, and in said survey and patent was, described as follows:

Lying and being in the County of Bourbon, on the Southwest side of Big Sandy, and bounded as followeth, to-wit: Beginning at the lower side of the mouth of Craig's Creek on the bank of Sandy at a poplar and ash, thence down Sandy and binding thereon North 15 East 250 poles, North 85 West 100 poles, South 42 West 92 poles, South 60 West 52 poles, South 75 West 86 poles, North 20 West 280 poles, North 56 West 360 poles, North 45 West 180 poles, North 25 West 204 poles to two sugar trees, thence South 45 West 530 poles to a stake, thence South 45 East 1,200 poles to two maples and poplar, thence North 45 East 541 poles to the beginning; which said patent is recorded in the Land Office of Kentucky, in Book 12 of (Va.) Grants, page 352.

3rd tract.

That certain tract or parcel of land containing 5,940 acres, by survey bearing date the 18th day of April, 1787, which was granted by the Commonwealth of Virginia to John Craig, by letters
50 patent bearing date the 2nd day of February, 1790, a copy of which said patent, marked Exhibit No. 3, is filed herewith as part hereof, and which said tract of land, now wholly or partly in the County of Pike, State of Kentucky, but at the time of said survey in the County of Bourbon, State of Virginia, is, and in said survey and patent was, described as follows:

Lying and being in the County of Bourbon, on the Southwest side of Big Sandy river, and bounded as followeth, towit: Beginning at the lower corner on Sandy of said Walker's survey of 4,060 acres at two sugar trees, thence down Sandy as it meanders North 35 East 114 poles, North 5 West 234 poles, North 25 West 160 poles, North 75 West 140 poles, North 40 West 214 poles to the mouth of Elkhorn, North 50 West 108 poles, North 65 West 170 poles, North 45 West 180 poles, North 60 West 80 poles to a wal*but*, sugar tree, hickory and lynn, thence South 45 West 672 poles to a white oak, thence South 45 East 1,180 poles, crossing Elkhorn to a stake, corner to said Walker's 4,060 acres survey, thence with the line of said survey North 45 East 530 poles to the beginning; which said patent is recorded in the Land Office of Kentucky, in Book 12 of (Va.) Grants, page 348.

4th tract.

That certain tract or parcel of land containing 20,000
51 acres, by survey bearing date the 17th day of April, 1787, which was granted by the Commonwealth of Virginia to

Daniel Duvall and Charles Marshall, by letters patent bearing date the 14th day of December, 1789, a copy of which said patent, marked Exhibit No. 4, is filed herewith as part hereof, and which said tract of land, now wholly or partly in the County of Pike, State of Kentucky, but at the time of said survey in the County of Bourbon, State of Virginia is, and in said survey and patent was, described as follows: Lying and being in the County of Bourbon, on the waters of Big ——, and bounded as followeth, towit: Beginning at the upper corner on the Bank of Sandy of a survey of 4,060 acres made in the name of Merry Walker, said survey is the upper survey on Sandy that was made for said Walker by virtue of part of his entry of 162,518 acre entry that was not withdrawn, to begin at the lower side of the mouth of Craig's Creek at an ash and poplar, thence up Sandy with its meanders South 26 East 160 poles, North 68 East 160 poles, South 35 East 120 poles, to two ashes, a sugar tree and lynn, this being the lower corner on Sandy of a survey made for John Walker and Company, that was located in the same place that John Fowler's entry was withdrawn from, thence with the line of said survey South 45 West 1,101¾ poles to
52 two white oaks, thence with another of his lines South 45 degrees East 1,131 poles to a chestnut tree, thence South 45 degrees West 1,969 poles to a stake, thence North 45 degrees West 1,460 poles to two sugar trees in the line of the 40,518 acres that was withdrawn from the middle of said Walker's entry, thence with a line of the same North 45 degrees East to a corner of a 20,000 acres surveyed for said Walker; and with a line of said survey the same course to the corner of the first mentioned 4,060 acre survey, and with the line of the same, the same course, the whole amounting to 2939¾ poles to the beginning; which said patent is recorded in the Land Office of Kentucky, in Book 12 of (Va.) Grants, page 317.

5th tract.

That certain tract or parcel of land containing 20,000 acres, by survey bearing date the 18th day of April, 1787, which was granted by the Commonwealth of Virginia to Richard Adams, by letters patent bearing date the 24th day of February, 1790, a copy of which said patent, marked Exhibit No. 5, is filed herewith as part hereof, and which said tract of land, now wholly or partly in the County of Pike, State of Kentucky, but at the time of said survey in the County of Bourbon, State of Virginia, is, and in said survey and patent was, described as follows:

53 Lying and being in the County of Bourbon, on the waters of Big Sandy, and bounded as followeth, towit: Beginning at the most Westerly corner of Daniel Duvall's and Charles Marshall's survey of 20,000 acres, at two sugar trees, thence with the line of the same South 45 degrees East 1,460 poles to a stake, thence South 45 degrees West 2,191¾ poles to three chestnut trees, thence North 45 degrees West 1,460 poles to two sugar trees, thence North 45 degrees East 2,191¾ poles to the beginning; which said patent is recorded in the Land Office of Kentucky, in Book 12 of (Va.) Grants page 384.

6th Tract.

That certain tract or parcel of land containing 20,000 acres by survey bearing date of the 19th day of April, 1787, which was granted by the Commonwealth of Virginia to John Craig, by letters patent bearing date the 4th day of February, 1790, a copy of which said patent, marked Exhibit No. 6, is filed herewith as part hereof, and which said tract of land, now wholly or partly in the County of Pike, State of Kentucky, but at the time of said survey in the County of Bourbon, State of Virginia, is, and in said survey and patent was, described as follows:

Lying and being in the County of Bourbon, on the waters
54 of Big Sandy, and bounded as followeth to-wit: Beginning at a white oak, it being the West corner of said Walker's survey of 5,940 acres, and with the back line of said survey South 45 degrees East 1,180 poles to a 4,060 acre survey of said Walker's and with the back line of said survey the same course 1,200 poles to the South corner of said survey, two maples and poplar, thence South 45 degrees West 1,344 poles to a sugar tree, poplar and walbut, thence North 45 degrees West 2,380 poles to two red oaks, thence North 45 degrees East 1,344 poles to the beginning; which said patent is recorded in the Land Office of Kentucky, in Book 12 of (Va.) Grants, page 351.

7th Tract.

That certain tract or parcel of land containing 40,418 acres, by survey bearing date the 15th day of March, 1788, which was granted by the Commonwealth of Kentucky to John May and David Ross, by letters patemt bearing date the 11th day of April, 1794, a copy of which said patent, marked Exhibit No. 7, is filed herewith as part hereof, and which said tract of land, now wholly or partly in the County of Pike, State of Kentucky, but at the time of said survey in the County of Bourbon, State of Virginia, is, and in said survey and patent was, described as follows:

Lying and being in the County of Bourbon, on Shelby's Creek
a Western branch of Sandy, and bounded as followeth, towit:
55 Beginning at two red oaks, this being the West corner of a survey of 20,000 acres made the 19th of April, 1787, for Merry Walker, thence South 45 degrees East 2,380 poles to a sugar tree, poplar and walnut, said Walker's South corner, thence South 45 degrees West 2,717 poles to two sugar trees, a poplar and lynn at the head of a spring, thence North 45 degrees West 1,120 poles to a large Lick, the same course continued in all 2,380 poles, crossing several branches of Shelby Creek to two chestnut oaks, thence North 45 degrees East 2,717 poles, crossing main Shelby's Creek to the beginning; which said patent is recorded in the Land Office of Kentucky, in Book 3 of Grants, page 514.

8th Tract.

That certain tract or parcel of land containing 5,000 acres, by survey bearing date the 22nd day of April, 1787, which was granted

by the Commonwealth of Virginia, to John Craig, by letters patent bearing date the 4th day of February, 1790, a copy of which said patent, marked Exhibit No. 8, is filed herewith as part hereof, and which said tract of land now wholly or partly in the County of Pike, State of Kentucky, but at the time of said survey in the County of Bourbon, State of Virginia, is, and in said survey and patent was, described as follows:

Lying and being in the County of Bourbon, on the waters
56 of Big Sandy river, and bounded as followeth, towit: Beginning at two chestnut oaks, being the West corner of the 40,518 acres that was withdrawn from the said entry, thence South 45 degrees East 1,190 poles to a sugar tree, thence South 45 degrees West 672 poles to a stake, thence North 46 degrees West 1,190 poles to two white oaks, thence North 45 degrees East 672 poles to the beginning, which said patent is recorded in the Land Office of Kentucky, in Book 12 of (Va.) Grants, page 351.

9th Tract.

That certain tract or parcel of land containing 5,000 acres, by survey bearing date the 23rd day of April, 1787, which was granted by the Commonwealth of Virginia to John Craig, by letters patent bearing date the 2nd day of February, 1790, a copy of which said patent, marked Exhibit No. 9, is filed herewith as part hereof, and which said tract of land, now wholly or partly in the County of Pike, State of Kentucky, but at the time of said survey in the County of Bourbon, State of Virginia, is, and in said survey and patent was, described as follows:

Lying and being in the County of Bourbon, on the waters of Big Sandy river, and bounded as followeth, towit: Beginning at a sugar tree, the East corner of said Walker's survey of 5,000
57 acres and with a line of said survey South 45 degrees West 672 poles to a stake, thence South 45 degrees East 1,190 poles to two white oaks, thence North 45 degrees East 672 poles to two sugar trees, a poplar and lynn, thence North 45 degrees West 1,120 poles to a large Lick, continued in all 1,190 poles to the beginning; which said patent is recorded in the Land Office of Kentucky, in Book 12 of (Va.) Grants, page 350.

10th Tract.

That certain tract or parcel of land containing 20,000 acres, by survey bearing date the 24th day of April, 1787, which was granted by the Commonwealth of Virginia to John Craig, by letters patent bearing date the 4th day of February, 1790, a copy of which said patent, marked Exhibit No. 10, is filed herewith as part hereof, and which said tract of land, now wholly or partly in the County of Pike, State of Kentucky, but at the time of said survey in the County of Bourbon, State of Virginia, is, and in said survey and patent was, described as follows:

Lying and being in the County of Bourbon, on the waters of Big Sandy, and bounded as followeth, towit: Beginning at two white oaks, it being the West corner of said Walker's survey of

5,000 acres, thence with said survey South 45 degrees East
58 1,190 poles, crossing some of the branches of Shelby's Creek to the West corner of another survey of 5,000 acres in the name of said Walker, and with the line of said survey the same course 1,190 poles to two white oaks, thence South 45 degrees West 1,344 poles to two red oaks, thence North 45 degrees West 2,380 poles crossing some of the branches of Shelby's Creek to two white oaks, thence North 45 degrees East 1344 poles to the beginning; which said patent is recorded in the Land Office of Kentucky, in Book 15 of (Va.) Grants, page 211.

11th Tract.

That certain tract or parcel of land containing 14,280 acres, by survey bearing date the 13th day of April, 1787, which was granted by the Commonwealth of Virginia to Benjamin Robinson, Richard Young and John Robinson, by letters patent bearing date the 21st day of January, 1792, a copy of which said patent, marked Exhibit No. 11, is filed herewith as part hereof, and which said tract of land, now wholly or partly in the County of Pike, State of Kentucky, but at the time of said survey in the County of Bourbon, State of Virginia, and in said survey and patent was, described as follows:

Lying and being in the County of Bourbon, on the Big Sandy river, and bounded as followeth to*wit*: Beginning at a wal-
59 nut, sugar tree, hickory and lynn, lower corner of an entry of 162,518 acres in the name of Merry Walker, thence with the lower line of said entry South 45 degrees West 2,500 poles, crossing Shelby Creek to two white oaks, thence North 45 degrees West 1,024 poles to two white oaks, thence North 45 degrees East 2,200 poles, to three sugar trees on the bank of Sandy, thence up Sandy as it meanders South 246 poles, South 85 East 172 poles, North 70 degrees East 236 poles, South 20 degrees East 88 poles, South 35 degrees West 140 poles, South 45 degrees East 196 poles, South 30 degrees East 160 poles, North 35 degrees East 100 poles to the mouth of Shelby's Creek, continued 180 poles further, South 80 degrees East 72 poles, South 60 degrees East 160 poles to the beginning; which said patent is recorded in the Land Office of Kentucky, in Book 14 of (Va.) Grants, page 376.

12th Tract.

That certain tract or parcel of land containing 16,000 acres, by survey bearing date the 3rd day of May, 1787, which was granted by the Commonwealth of Virginia to John Weaglesworth and Richard Young, by letters patent bearing date the 21st day of January, 1792, a copy of which said patent, marked Exhibit No. 12, is filed herewith as part hereof, and which said tract of land,
60 now wholly or partly in the County of Pike, State of Kentucky, but at the time of said survey in the County of Bourbon, State of Virginia is, and in said survey and patent was, described as follows:

Lying and being in the County of Bourbon, on the waters of Big Sandy River, and bounded as followeth towit: Beginning at two

white oaks, the South corner of Benjamin Robinson, Richard Young and John Robinson survey of 14,280 acres, and in the line of Merry Walker entry of 162,518 acres, and with said Walker's line South 45 degrees West 2,500 poles, crossing several small branches of Shelby's Creek to two sugar trees, thence North 45 degrees West 1,024 poles to two chestnut oaks, thence North 45 degrees East 2,500 poles to two white oaks, thence South 45 degrees East 1,024 poles to the beginning; which said patent is recorded in the Land Office of Kentucky, in Book 14 of (Va.) Grants, page 515.

13th Tract.

That certain tract or parcel of land containing 10,000 acres, by survey bearing date the 14th day of May, 1787, which was surveyed in the name of Michael Ryon, a copy of which said survey, marked Exhibit No. 13, is filed herewith as part hereof, and which said tract of land, now wholly or partly in the County of Pike, State of
61 Kentucky, but at the time of said survey in the County of Bourbon, State of Virginia, is, and in said survey was, described as follows:

Lying and being in the County of Bourbon, on the waters of Big Sandy, and bounded as follows, towit: Beginning at A., two sugar trees, being the South corner of I. Weaglesworth and Richard Young's survey of 16,000 acres in the line of Merry Walker's entry of 162,518 acres and with said Walker's line South 45 degrees West 1,000 poles to a white oak, thence North 45 degrees West 1,600 poles to two chestnut trees, thence North 45 degrees East 1,000 poles to a white oak, thence South 45 degrees East 576 poles to Weaglesworth and Young's West corner and with their line the same course continued in all 1,600 poles to the beginning; which said survey is recorded in the Clerk's office of the County Court of Bourbon County, Kentucky, in Book "A" of Surveys, page 73.

14th Tract.

That certain tract or parcel of land containing 15,246 acres, by survey bearing date the 1st day of May, 1787, which was granted by the Commonwealth of Virginia to William Robinson, Benjamin Robinson, Michael Robinson, Jr., John Robinson, Mary Mc-
62 Gee, Betsy Robinson, Michael Robinson, Henry Robinson, James Robinson, John Robinson, William McGee and Thomas McGee, by letters patent bearing date the 21st day of January, 1792, a copy of which said patent, marked Exhibit No. 14, is filed herewith as part hereof, and which said tract of land, now wholly or partly in the County of Pike, State of Kentucky, but at the time of said survey in the County of Bourbon, State of Virginia, is, and said survey and patent was, described as follows:

Lying and being in the County of Bourbon, on the waters of Big Sandy, and bounded as followeth, towit: Beginning at three sugar trees lower corner to Benjamin Robinson and Company's survey of 14,280 acres, thence with the lower line of said survey South 45 degrees West 2,200 poles to their West corner, two white oaks, thence North 45 degrees West 1,108 and .8 poles to two sugar trees, thence

North 45 degrees East 2,200 poles to a poplar, thence South 45 degrees East 1,108 and .8 poles to the beginning; which said patent is recorded in the Land Office of Kentucky, in Book 14 of (Va.) Grants, page 379.

15th Tract.

That certain tract or parcel of land containing 5,000 acres, by survey bearing date the 5th day of May, 1787, which was granted by the Commonwealth of Kentucky to Preeson Boudain and
63 Richard Young, by letters patent bearing date the 8th day of March, 1793, a copy of which said patent, marked Exhibit No. 15, is filed herewith as part hereof, and which said tract of land, now wholly or partly in the County of Pike, and State of Kentucky, but at the time of said survey in the County of Bourbon, State of Virginia, is, and in said survey and patent was, described as follows:

Lying and being in the County of Bourbon, on the waters of Big Sandy River, and bounded as followeth, towit: Beginning at two white oaks, it being the West corner of Benjamin Robinson's and Company's survey of 14,280 acres and corner to Weaglesworth and Young's survey of 16,000 acres, thence with said Weaglesworth and Young's line South 45 degrees West 1,300 poles to a sugar tree, thence North 45 degrees West 615 3-10 poles to a poplar, thence North 45 degrees East 1,300 poles, crossing some small branches to two white oaks in the line of William Robinson and Company's survey of 15,246 acres, thence with the line of said survey, South 45 degrees East 615 3-10 poles to the beginning; which said patent is recorded in the Land Office of Kentucky, in Book 3 of Grants, page 34.

16th Tract.

That certain tract or parcel of land containing 23,250 acres,
64 by survey bearing date the 15th day of September, 1788, which was granted by the Commonwealth of Virginia to James Garrard, by letters patent bearing date the 19th day of October, 1789, a copy of which said patent, marked Exhibit No. 16, is filed herewith as part hereof, and which said tract of land, now wholly or partly in the County of Pike, State of Kentucky, but at the time of said survey in the County of Bourbon, State of Virginia, is, and in said survey and patent was, described as follows:

Lying and being in the County of Bourbon, on the west side of Big Sandy, and bounded as followeth, towit: Beginning at a poplar the North corner of William Robertson & Co. survey of 15,246 acres, thence South 45 degrees West 2,200 poles to said Robertson & Co. West corner at two sugar trees, thence north 45 degrees West 1,480 poles to a poplar, ash and sugar tree, thence North 45 degrees East 2,020 poles to three buckeyes, six sugar trees and two walnut trees standing on the bank of Sandy immediately below the mouth of Bear Creek thence up Sandy and binding thereon 1,250 poles on a reduced line to a buckeye, and sugar tree, thence leaving Sandy and running South 3 degrees West 530 poles to the beginning; which said patent is recorded in the Land Office of Kentucky, in Book 12 of (Va.) Grants, page 339.

17th Tract.

That certain tract or parcel of land containing 30,000 acres,
65 by survey bearing date the 19th day of March 1788, which was granted by the Commonwealth of Virginia to Michael O'Mealy, by letters patent bearing date the 20th day of February, 1792, a copy of which said patent, marked Exhibit No. 17, is filed herewith as part hereof, and which said tract of land, now wholly or partly in the County of Pike, State of Kentucky, but at the time of said survey in the County of Bourbon, State of Virginia, is, and in said survey and patent was, described as follows:

Lying and being in the County of Bourbon (*formally* Fayette, in the district of Kentucky), on the Louvisa River, a fork of Sandy, the waters of the Ohio, and bounded as followeth, towit: Beginning at the upper corner of John Walker & Co.'s survey of 7,537 acres at two poplars and an ash on the West bank of said river and running down the meanders of said river and binding on the same 1,770 poles to a poplar and ash the upper corner of Merry Walker's survey of 4,060 acres, thence North 45 degrees East 3,488 poles crossing the river and a large branch to an ash and sugar tree; thence South 45 degrees East 1,460 poles to two white oaks; thence South 45 degrees West 3,287 poles crossing a large creek and the river to the beginning; which said patent is recorded in the Land Office of Kentucky, in Book 14 of (Va.) Grants, page 396.

66 18th Tract.

That certain tract or parcel of land containing 30,000 acres, by survey bearing date the 19th day of March, 1788, which was granted by the Commonwealth of Virginia to Michael O'Mealy, by letters patent bearing date the 20th day of February, 1792, a copy of which said patent, marked Exhibit No. 18, is filed herewith as part hereof, and which said tract of land, now wholly or partly in the County of Pike, State of Kentucky, but at the time of said survey in the County of Bourbon, State of Virginia, is, and in said survey and patent was, described as follows:

Lying and being in the County of Bourbon, and district of Kentucky, on the Louvisa Fork of Sandy River, the waters of the Ohio, and bounded as followeth, towit: Beginning at the lower end of said Smith's 30,000 acre survey No. 1 at a poplar and ash corner to said survey and to a survey made in the name of Merry Walker of 4,060 acres and on the West bank of said river in the bottom, and runneth down the meanders of Sandy on the West side and binding on the same 2,950 poles to a walnut, sugar tree, hickory and lynn, on the lower corner of said Walker's survey of 5,940 acres, and runneth thence North 45 degrees East 1,920 poles crossing said river to two sugar trees, thence South 45 degrees East 2,380
67 poles to a white oak, thence South 45 degrees West 2116 poles crossing a large creek and the river to the beginning; which said patent is recorded in the Land Office of Kentucky, in Book 14 of (Va.) Grants, page 392.

19th Tract.

That certain tract or parcel of land containing 5,000 acres, by survey bearing date the 20th day of March, 1788, which was granted by the Commonwealth of Virginia to Michael O'Mealy, by letters patent bearing date the 20th day of February, 1792, a copy of which said patent, marked Exhibit No. 19, is filed herewith as part hereof, and which said tract of land, now wholly or partly in the County of Pike, State of Kentucky, but at the time of said survey in the County of Bourbon, State of Virginia, is, and in said survey and patent was, described as follows:

Lying and being in the County of Bourbon and district of Kentucky, in the forks of Main Sandy River, and the Louvisa on Johns Creek, a branch of Louvisa River, and bounded as followeth towit: Beginning at two beech trees and maple corner to said Smith's survey No. 7, thence South 60 West 800 poles to two beech trees and maple, thence North 30 degrees West 1,000 poles to a beech and
68 black oak, corner to said Smith's survey No. 1, and with a line of the same North 60 degrees East 800 poles to a walnut and black oak, corner to said Smith's surveys Nos. 1 and 7, and with a line of the seventh South 30 degrees East 1,000 poles to the beginning; which said patent is recorded in the Land Office of Kentucky, in Book 14 of (Va.) Grants, page 584.

All that part that is situated in Pike County, Kentucky, West of the top of the ridge that divides the waters of Levisa Fork from the waters of Tug Fork of Sandy River, of that certain tract or parcel of land containing 150,000 acres, by survey bearing date the 17th day of December, 1795, which was granted by the Commonwealth of Virginia to John Henry and Alexander Smyth, by letters patent bearing date the 20th day of August, 1796, a copy of which said patent marked Exhibit No. 20, is filed herewith as part hereof, and which said tract of land, now wholly or partly in the County of Pike, State of Kentucky, but in said survey and patent stated to be in the County of Russell, State of Virginia, is, and in said survey and patent was, described as follows:

Lying and being in the County of Russell, and is bounded as followeth, to-wit: Beginning on the East bank of Great Sandy River at the junction of Russell and Louisa branches which form
69 it at a sycamore tree marked as a corner, and running thence up the Louisa or Northeasterly branch on the East side binding thereon according to its several courses and meanders, 2,100 poles to a buckeye, a sugar tree and large poplar tree standing on the bank at the lower end of a bottom some distance below the mouth of the first branch that empties below Grape Vine on the same side, which trees were marked as a corner by Henry Smith in February, 1795, and running thence south 63 degrees East 4,210 poles to Pointers, thence North 2,960 poles to a stake in a line of Wm. Merritt's survey of 100,000 acres and with the line thereof North 63 degrees West 2,000 poles to a white oak and North 45 degrees East 3,050 poles to an ash, a buckeye, a poplar and a cluster of sycamore trees standing on the bank of that branch of Sandy which separates Russell from Wythe and Kenhawa Counties about a computed mile

above the mouth of a creek which empties on the South side called Blackberry, which were marked by Henry Smith at the time aforesaid and since by French Mason as the lower corner to Merritt's said survey and one of the sycamores with the letters F. M., thence down the last mentioned branch of Sandy, binding thereon on the South side according to its several courses and meanders 8,076 poles to an elm birch, marked as a corner standing on the South bank of the said branch 49 poles below the mouth of a creek that empties there-
into on the South side, called Comforts Creek, which trees are
70 also a corner to a survey made for Alexander Walcott; thence with a line of the last mentioned survey South 13 degrees West 7,480 poles to the beginning; which said patent is recorded in the Land Office of Virginia, in Book 34, page 505.

21st Tract.

All that part that is situated in Pike County, Kentucky West of the top of the ridge that divides the waters of Levisa Fork from the waters of Tug Fork of Sandy River, of that certain tract or parcel of land containing 300,000 acres, by survey bearing date the 28th day of November, 1795, which was granted by the Commonwealth of Virginia to Benjamin Haskell, by letters patent bearing date the 16th day of February, 1797, a copy of which said patent, marked Exhibit No. 21, is filed herewith as part hereof, and which said tract of land, now wholly or partly in the County of Pike, State of Kentucky, but in said survey and patent said to be in the County of Russell, State of Virginia is, and in said survey and patent was, described as follows:

Lying and being in the County of Russell, adjoining Jesse Evan's survey of 180,000 acres, and is bounded as followeth to wit: Beginning at a chestnut and chestnut oak the second corner to Jesse Evan's said survey which stands 3,942 poles north of the head of Stock Creek at which a lynn and three poplars marked as corner stands and
with lines of the aforesaid survey N. 57 degrees E. 3,216 poles
71 to a maple and two chestnuts marked (J. G.), N. 11 degrees E. 7,160 poles to a white oak and Spanish oak marked (J. G.), N. 67 degrees E. 2,634 poles passing a corner of said Evan's survey at 1,400 poles to three poplars and a sugar tree corner to Richard Smith's survey of 200,000 acres, N. 52 degrees W. 8,220 poles to a red oak and two beeches marked (J. G.), and thence S. 14,780 poles to the beginning; which said patent is recorded in the Land Office of Virginia, in Book 38, page 1.

22nd Tract.

That certain tract or parcel of land containing 8,000 acres, by survey bearing date the 25th day of April, 1789, which was granted by the Commonwealth of Kentucky to George Lewis, by letters patent bearing date the 16th day of October, 1795, a copy of which said patent, marked Exhibit No. 22, is filed herewith as part hereof, and which said tract of land, now wholly or partly in the County of Pike, State of Kentucky, but at the time of said survey in the County of

Bourbon, State of Virginia, and in said survey and patent was, described as follows:

Lying and being in the County of Bourbon, on the waters of Big Sandy, and bounded as followeth, to wit: Beginning at a white oak corner to Michael Ryan's survey of 10,000 acres in Merry
72 Walker's line, thence North 45 degrees West 1,600 poles with said Ryon's line to his corner, two chestnut trees, thence South 45 degrees West 800 poles to a sugar tree corner to said Grant's 12,058¾ acres survey, thence with the line of said survey, South 45 degrees East 1,600 poles to the beginning corner of said Grant's 12,058¾ acre survey at two white oaks in Merry Walker's line, thence with his line North 45 degrees East 800 poles to the beginning; which said patent is recorded in the Land Office of Kentucky, in Book 5 of Grants, page 213.

That the land in said surveys and patents described, since the first day of June, 1792, has been within the boundary of the State of Kentucky, and that the said tracts of land, originally within said Bourbon and Russell counties, now lie, and for more than eighty-five years last past have been, wholly or partly, within Pike County, Kentucky.

Plaintiff says that Pike County was formed by an Act of the Legislature of Kentucky in the year 1822; that plaintiff has caused an examination of the records of said County to be made, and that from said record it appears that, except as hereinafter stated, none of the patentees named in said patents, or any of them, ever conveyed or devised the title vested, or attempted to be vested, in them, respectively, by said patents, or any of them, as to said tracts,
73 or any part thereof, or any of them, or any interest therein; and the title so vested by said patents, except as stated, so far as shown by such record, is still in the heirs of said several patentees.

Said records do show, however, that the patentees named in said tracts Nos. 2, 3, 6, 8, and 9, prior to the year 1800, conveyed to one John Groves, of Richmond, Virginia, who is now dead, said tracts Nos. 2, 3, 6, 8 and 9; that there is no record of said Groves ever having conveyed the same, or any of them or part thereof or any interest therein to any person whomsoever.

Plaintiff further says that certain persons, without exhibiting any authority or title of record so to do, many years ago conveyed, or attempted to convey, certain of said tracts of land to persons long since dead, who made no conveyance or devise thereof, or of any part thereof, or interest therein; and in other instances conveyed, or attempted to convey certain of said tracts and interests therein to other persons, and, in some instances, to different sets of persons, some of whom are yet alive, as hereinafter stated, and the title of some of whom became vested, or was attempted to be vested as now stated, to wit:

Plaintiff says that there are no conveyances of record in
74 said county affecting the tracts hereinbefore described, and numbered as follows, to wit: No. 1, No. 5, No. 7, No. 11, No. 12, No. 13, No. 14, or No. 15.

By deed dated June 16, 1790, recorded in deed book "H", page 139, Pike County Court Clerk's office, John Craig, the patentee

named in said patents for tracts Nos. 2, 6, 8 and 9, conveyed or attempted to convey, to one John Groves, of Richmond, Virginia, who is now dead, the said four tracts of land, but there is no record of any conveyance of said tracts, or any of them, or any interest in them, or any of them, by the said Groves to any person whomsoever; and there is no record of any conveyance of said tracts, or any of them, or any interest therein under said patents by any person whomsoever, except as stated, and except that by deed dated August 10, 1898, recorded in deed book No. 24, page 408, Pike County Court Clerk's office, J. M. Duncan, Commissioner, conveyed, or attempted to convey, the said four tracts of land, Nos. 2, 6, 8 and 9 to the defendant, Cortland Van Camp; and there is no record of the said Van Camp ever having conveyed the same, or any of them, or any part thereof, or any interest therein, or in any of them to any person whomsoever.

75 Plaintiff says that the said John Craig, to whom was patented tract No. 3 hereinbefore described, by deed dated June 16, 1790, recorded in deed book "H", page 139, Pike County Court Clerk's office, attempted to convey to the said John Groves, of Richmond, Virginia, said tract No. 3; and that there is no record of the said Groves having conveyed said tract, or any part thereof, or any interest therein, to any person whomsoever.

By deed dated August 10, 1898, recorded in deed book No. 24, page 408, Pike County Court Clerk's office, one J. M. Duncan, Commissioner, conveyed, or attempted to convey, said tract of land No. 3 to the defendant, Cortland Van Camp; and there is no record of the said defendant ever having conveyed the same, or any part thereof, or any interest therein, to any person whomsoever.

By deed dated September 6, 1831, recorded in Book "A-1" page 187, Pike County Court Clerk's office, one Lewis Winzfield, of Richmond, Virginia, and without exhibiting any investiture of title or authority in himself so to do, conveyed, or attempted to convey, to the defendant Isaac L. Casey, said tract of land No. 3; and there is no record of any conveyance by said Isaac L. Casey of said tract of land, or any part thereof, or any interest therein, to any person whomsoever.

76 Plaintiff says that there is no record of any conveyance by James Garrard, the patentee named in the patent for tract No. 16 hereinbefore described, to any person whomsoever; but the alleged heirs of one I. B. Garrigness, without exhibiting any title or authority so to do in themselves, conveyed, or attempted to convey, said tract of land to the defendant, Alfred Elmer Mills, by deed dated October 18, 1890, recorded in deed book "Y," page 480 Pike County Court Clerk's Office, and that there is no record of the said defendant, Alfred Elmer Mills, having conveyed the same, or any part thereof, or any interest therein, to any person whomsoever.

Plaintiff says that there is no record in said County of any conveyance or devise of said tracts of land hereinbefore numbered, respectively, 4 and 22, nor any part of them, or either of them, or any interest in them, or in either of them, by patentees named in the

patents therefor, towit: Daniel Duvall and Charles Marshall, who were the patentees named in said Tract No. 4, or by the said George Lewis, patentee named in said patent for Tract No. 22.

By deed dated June 18, 1890, recorded in deed book 2, page 43, Pike County Court Clerk's Office, Lewis Roberts, without exhibiting mesne conveyances from the said patentees, or either of them, conveyed, or attempted to convey, said tracts Nos. 4 and 22 to
77 the defendant, Union Trust Company; and there is no record of the said Union Trust Company ever having conveyed the same, or any part of them, or either of them, or any interest in them, or either of them, to any person whomsoever.

By deed dated November 2, 1892, recorded in deed book 10, page 279, Pike County Court Clerk's Office, one Benjamin E. Greene, reciting that he was of Dalton, Georgia, and without exhibiting in himself any title or authority so to do, and without exhibiting any connection between himself and the said Union Trust Company, though reciting a privity, with an alleged remote grantor of the said Union Trust Company, conveyed, or attempted to convey, said two tracts Nos. *Nos.* 4 and 22, to the defendant, John V. Le Moyne, in said conveyance stated to be of Baltimore County, Maryland; and the records do not show that said John V. Le Moyne has conveyed said tracts, or either of them, or any part of them or either of them, or any interest in them, or in either of them, to any person whomsoever.

Plaintiff says that there is no record of any conveyance or devise of title upon the part of said John Henry and Alexander Smyth, or either of them, of said tract hereinbefore described as No. 20, or any part thereof, or any interest therein; but that by deed
78 dated April 21, 1832, recorded in book "A-1," page 212, Pike County Court Clerk's office, the defendant, Hall J. Howe, executed a power of attorney to one Robert H. Dalton, of Boston, Massachusetts, authorizing him to sell and convey said tract of land, but the records do not show that the said Dalton ever conveyed, or attempted to convey, said tract, or any part thereof, or any interest therein; and by reason thereof the said Hall J. Howe is made a defendant hereto. The records do not show how said Howe became vested with any interest in said tract, or that the said Hall J. Howe ever conveyed said tract of land, or any part thereof, or any interest therein, to any person whomsoever.

By deed recorded in deed book "X," page 506, Pike County Court Clerk's office, one Caroline E. Glentworth, without exhibiting any title in herself, or authority so to do, conveyed, or attempted to convey, to the defendant, Oliver T. Crane, therein recited to be of Morristown, New Jersey, an interest in said tract of land No. 20, and there is no record of the said Oliver T. Crane having conveyed the said interest, or any part thereof, to any person whomsoever.

By power of attorney dated July 4, 1823, recorded in Book "A," page 64, Pike County Court Clerk's office, the defendant,
79 Ebenezer Melvin, attempted to authorize one Amos Melvin to convey said tract of land, but there is no record of the said Amos Melvin having conveyed the same, or any interest therein, nor is there any record of how the said Ebenezer Melvin became the

owner of any interest in said tract, but he is made a defendant hereto. The records do not show that said Ebenezer Melvin ever conveyed said tract, or part thereof, or interest therein, to any person whomsoever.

Plaintiff says that there is no record in the said County of Michael O'Meally, the patentee named in patents granting tracts Nos. 17, 18 and 19, hereinbefore described, having conveyed the same, or any part thereof, or any of them, or any interest in them, or in any of them, to any person whomsoever; but by deed dated May 20, 1896, recorded in deed book No. 25, page 408, Pike County Court Clerk's office, one C. M. Dolly, purporting to act under several mesne conveyances, without showing privity with said patentee, attempted to convey said three tracts of land to the defendant, Eastern Kentucky Development Company. The records do not show the said Eastern Kentucky Development Company has ever conveyed, or attempted to convey, the same, or any of them, or any interest in them, or in any of them, to any person whomsoever.

80 By deed dated April 20, 1896, recorded in deed book No. 14, page 8, Pike County Court Clerk's office, one David W. Armstrong, without exhibiting any privity as between himself and the defendant Eastern Kentucky Development Company, or exhibiting any privity between himself and the aforesaid patentee, attempted to convey said three tracts of land to the defendant, William Nelson Woodruff, in said deed recited to be of Hartford, Connecticut, and there is no record showing that the said William Nelson Woodruff ever conveyed the same, or any of them, or any part thereof, or any interest in them, or in any of them, to any person whomsoever.

Plaintiff says that by deed dated March 26, 1857, recorded in deed book No. 6, page 60, Pike County Court Clerk's office, one William M. Gitt, as attorney for Silas N. Glover, and in his own right claiming under Benjamin Haskell, patentee in tract No. 21, hereinbefore described, conveyed an undivided one-third interest in said tract of land to the defendant, Charles Seldon, of New York City; and that there is no record of the said Seldon having conveyed said interest, or any part thereof, to any person whomsoever.

And that by deed dated March 20, 1902, recorded in deed book No. 24, page 54, Pike County Court Clerk's office, one Robert

81 A. Boyd, claiming through mesne conveyances under the same grantor as the said defendant Seldon, conveyed said entire tract to the defendant, Robert Fletcher Rogers, of New York City; and that the records do not show that the said Rogers has ever conveyed the same, or any part thereof, or any interest therein, to any person whomsoever; and the said Robert Boyd by deed of mortgage dated September 29, 1894, recorded in Deed Book 12, page 548, conveyed the same to the defendant, Vidaurtees B. Edwards, Trustee, of Washington, D. C., and the said mortgage has never been released of record.

By deed dated October 2, 1905, recorded in deed book No. 41, page 146, Pike County Court Clerk's office, one George H. Taylor, of Mobile, Alabama, without exhibiting any authority other than that the statement in the deed is that he is the son of Maria Taylor, conveyed said tract of land to the defendant, George H. Taylor, of Nor-

folk, Virginia, which said conveyance was after the execution of deed by Maria A. Taylor to one Wilson H. Jonas, under whom the said Robert Boyd claims.

By deed dated August 30, 1905, recorded in deed book No. 37, page 425, Pike County Court Clerk's office, one A. K. McMurray, purporting to act under an alleged power of attorney from the defendant, Thomas Dillon, and without any record evidence of
82 claim or ownership upon the part of the said Thomas Dillon, attempted to convey said entire tract of land to the defendant, Walter L. Richards, in the said conveyance stated to be of Philadelphia; and the records of said County do not show that the said defendant, Richards, has ever conveyed said tract, or any part thereof, or any interest therein, to any person whomsoever.

By deed dated May 16, 1878, recorded in deed book "L," page 275, Pike County Court Records, one De Witt Clinton Heminway, claiming under one Andrew C. Martin, in whom the record does not show any interest was vested, undertook to convey said tract of land No. 21 as aforesaid to the defendant, James W. Linville, whose residence was not given in said deed; and the records do not show that the said defendant, Linville, conveyed the said tract of land, or any part thereof, or any interest therein, to any person whomsoever.

Plaintiff says that by deed dated June 16, 1790, recorded in deed book "H," page 139, Pike County Court Clerk's office, John Craig, who was the grantee in the patent for tract No. 10, hereinbefore described, and his wife, undertook to convey said tract of land to one John Groves, of Richmond, Virginia, who is now dead; and
83 that one Richard Smith, claiming under said John Groves, by deed dated August 14, 1795, recorded in book "H," page 136, Pike County Court Clerk's office, attempted to convey said tract of land No. 10, hereinbefore described, on one John Maylan, who has long since been dead; and there is no record of the said John Maylan having ever conveyed said tract of land, or any part thereof, or any interest therein, to any person whomsoever.

By deed dated October 20, 1866, recorded in deed book "H," page 129, Pike County Court Clerk's office, by Commissioner of the Franklin Circuit Court, the heirs of Alex Quarrier, the heirs of John Groves and the heirs of Richard Smith, undertook to convey said tract of land to the defendants, Samuel Fox, Maria Fox, Elizabeth Landsdale, Robert Walsh, Joseph Walsh, A. M. Walsh, Isabelle Walsh, E. Walsh, Maria Walsh, Thursa Walsh, Fannie Walsh, Oliver Walsh and Taylor Walsh; and there is no record showing that the said defendants, or any of them, conveyed said tract of land, or any part of it, or any interest in it, to any other person whomsoever.

By deed dated January 9, 1891, recorded in deed book 6, page 103, Pike County Court Clerk's office, Linton S. Amberson and others undertook to convey said tract of land to the defendants, Hiram S. McConnell and John P. Sherwood, recited to be of Beaver County, Pennsylvania; and the records do not show that the
84 said defendants, McConnell and Sherwood, or either of them, has ever conveyed said tract of land, or any part thereof, or any interest therein, to any person whomsoever.

By deed dated November 18, 1893, recorded in deed book No. 10,

page 372, Pike County Court Clerk's office, one Phil E. Croaker, without exhibiting any title or authority in himself so to do, undertook to convey said tract of land to the defendant, Mary E. Rinehart, therein stated to be of Effingham County, Illinois; and there is no record that the said Mary E. Rinehart, has ever conveyed said tract of land, or any part thereof, or any interest therein, to any person whomsoever.

By deed dated June 7, 1893, recorded in deed book No. 10, page 206, Pike County Court Clerk's office, one Eliza A. Shaw, and husband, without exhibiting privity of title with any person with title of record, undertook to convey said tract of land No. 10 to the defendant, Odella Craig; and there is nothing of record showing that the said defendant has ever conveyed said tract of land, or any part thereof, or any interest therein, to any person whomsoever.

The land described in this deed is stated to be twenty thousand (20,000) acres, near Pikeville and on the ridge between Big Sandy and Little Sandy, which location it is physically impossible to make, as the ridge between Big Sandy and Little Sandy is over fifty miles from Pikeville, and to so locate said property no part of it would be in either the Counties of Pike, Floyd, Knott or Letcher, but would have to be in Lawrence or Elliott County, wholly or partly.

By deed dated August 12, 1896, recorded in deed book No. 24, page 405, Pike County Court Clerk's office, one J. B. Birkshire, Commissioner, without exhibiting any title in privity with any person with the record title of said property, undertook to convey an
85 undivided interest in said tract of land to the defendants, Mary A. Craig, Cordelia F. Combs, Mary H. Craig, Lide H. Craig, Rose E. Craig and Rose K. Craig; and the records do not show that said defendants, or any of them, have ever conveyed said tract of land, or any part thereof, or any interest therein, to any person whomsoever.

And by deed dated August 12, 1896, recorded in deed book No. 24, page 413, Pike County Court Clerk's office, said Commissioner undertook to convey an undivided interest in said tract of land to the defendant, Cortland Van Camp; and there is no record of the said defendant ever conveying said tract of land, or any part thereof, or any interest therein, to any person whomsoever.

And by deed dated the — day of ——, recorded in deed book No. 24, page 430, the said Commissioner undertook to convey to defendants, G. G. Hughes and W. N. Pickerill, an undivided interest in said tract of land; and the records do not show that the said Pickerill or Hughes have ever conveyed said tract of land, or any part thereof, or any interest therein, to any person whomsoever.

And by deed dated August 12, 1896, recorded in deed book No. 33, page 88, Pike County Court Clerk's office, the said Commissioner undertook to convey to the defendants, E. T. Craig and Sallie Craig, an undivided interest in said tract of land; that the said E. T.
86 Craig died, leaving surviving him as recited as his only heirs, the defendants, W. T. Craig and Joseph D. Craig, to whom the defendant, A. W. McClure, by deed dated August 22, 1906, recorded in deed book No. 41, page 632, under took to convey an undivided interest in said tract of land.

By deed dated January 10, 1903, recorded in deed book No. 33, page 328, Pike County Court Clerk's office, the said Sallie Craig undertook to convey to the defendant, A. W. McClure, the entire interest that was by said Commissioner undertaken to be conveyed to her and her husband, the said E. T. Craig.

The records do not show that either the said A. W. McClure, W. T. Craig or Joseph D. Craig has ever conveyed said tract of land, or any part thereof, or any interest therein, to any person whomsoever.

Plaintiff says that the defendant, J. C. Twyman claims to be a grandson of the Reuben Twyman, who was one of the patentees of tract No. 1 hereinbefore described, and is claiming an interest therein, and he is therefore made a defendant hereto.

Plaintiff further says that said Commonwealth's Attorney does not know whether or not the grantees hereinbefore stated and al-
87 leged to be dead, died, or whether any of them died intestate or died leaving a valid last will and testament, or whether the title vested in them, or any of them, by said patents, or any of them, or whether the tract or tracts of land therein respectively described, descended to or vested in the heir or heirs at law of the said grantees aforesaid, or any of them, or was devised by them, or any of them, in whole or part, to or among them or others, or whether the said grantees, or any of them, conveyed or otherwise transferred the land or title, or part thereof, or interest therein, to others, or if so to whom; nor does said plaintiff or the Commonwealth's Attorney know in whom the title or claim to said land originally vested, if so vested, in said grantees, or any of them, is now vested or claimed, through or under the aforesaid conveyances to them, respectively, or any of them, to the whole or any part of said land, or interest therein; nor does the said Commonwealth's Attorney know, or have knowledge or information whatever, either as to the name, place of residence or country in which the said grantees or claimant or claimants of said land, or part thereof, or interest therein, under said patents and under said grantees, other than as herein stated, resides or may be found, or as to the name of the place where a postoffice is kept nearest to the place where such unknown defendant or de-
fendants, unknown owner, or unknown owners, or unknown
88 claimant or unknown claimants, or any of them, of said land, or part thereof, or interest therein under said patents and said deeds, resides or may be found. And for the reasons stated, the said unknown owner or owners, claimant or claimants of the said tracts of land, or part thereof, or interest therein, under said patents and under said deeds, are designated as the "unknown defendant and unknown defendants", and the "unknown owner and unknown owners," and the "*unknown claimant and unknown claimants*" and as such are made defendants herein for the purpose of declaring the title and claim of said defendant or defendants forfeited to the plaintiff, Commonwealth of Kentucky, and for selling the same in the manner provided and with the effect declared in Article III of an Act relating to Revenue and Taxation hereinafter referred to.

The defendants, Cortland Van Camp, Isaac L. Casy, Union Trust

Company of Philadelphia, Alfred Elmer Mills, John V. Le Moyne, Hall J. Howe, Oliver T. Crane, Ebenezer Melvin, Eastern Kentucky Development Company, William Nelson Woodruff, Charles Seldon, George H. Taylor, Vidantees B. Edwards, Trustee, Robert Fletcher Rogers, Thomas Dillon, Walter L. Richards, James W. Linville, Samuel Fox, Maria Fox, Elizabeth Lansdale, Robert Walsh, Joseph Walsh, A. M. Walsh, Isabelle Walsh, E. Walsh, Mariah Walsh, Thursa Walsh, Fannie Walsh, Oliver Walsh, Taylor Walsh,

89 Hiram S. McConnell, John P. Sherwood, Mary E. Rinehart, Odelia Craig, Mary A. Craig, Cordelia F. Combs, Mary H. Craig, Lide H. Craig, Rose E. Craig, Rose K. Craig, G. G. Hughes, W. N. Pickerill, W. T. Craig, Joseph D. Craig, A. W. McClure, Sallie Craig and E. T. Craig are, and each is, non-residents of the State of Kentucky, and, as plaintiff and said Commonwealth's Attorney believes, now absent therefrom; and that neither the defendant, Union Trust Company, nor the defendant, Eastern Kentucky Development Company, has an agent or officer in this State upon whom process can be executed; and plaintiff does not know, neither does the said Commonwealth's Attorney know, the name of the country of the residence of defendants, Cortland Van Camp, James W. Linville, Samuel Fox, Maria Fox, Elizabeth Lansdale, Robert Walsh, Joseph Walsh, A. M. Walsh, Isabelle Walsh, E. Walsh, Mariah Walsh, Thursa Walsh, Fannie Walsh, Oliver Walsh, Taylor Walsh, Mary A. Craig, Cordelia F. Combs, Mary H. Craig, Lide H. Craig, Rose E. Craig, Rose K. Craig, W. T. Craig, Joseph D. Craig, reside, or the name of the country in which any of them resides, nor does the said plaintiff, nor the said Commonwealth's Attorney, know the name of the place wherein a postoffice is kept nearest to the place where the said defendants, or any of them, reside or may be found.

90 Plaintiff says that the defendant, Isaac L. Casy, resides in the City of Richmond, County of Henrico, and State of Virginia, and that Richmond, in said County of Henrico and State of Virginia, is the name of the place wherein a postoffice is kept nearest to the place where the said Isaac L. Casy resides and may be found.

That the defendant, Alfred Elmer Mills, resides in the State of New Jersey, but that this plaintiff does not know, neither does the said Commonwealth's Attorney know, the name of the place wherein a postoffice is kept nearest the place where the said Alfred Elmer Mills resides or may be found; that the place of business of the defendant, Union Trust Company, is the City of Philadelphia, County of Philadelphia, and State of Pennsylvania, and that the City of Philadelphia, County of Philadelphia, and State of Pennsylvania, is the name of the place wherein a postoffice is kept nearest the place of business of said defendant, and where its officers and agents reside, and where it and they may be found; that the defendant, John V. Le Moyne, resides in Baltimore County, State of Maryland, but that this plaintiff does not know, neither does the said Commonwealth's Attorney know, the name of the place wherein a postoffice is kept nearest the place where the said John V.

91 Le Moyne resides or may be found; but that Towson is the name of the place of the county seat of said Baltimore County.

Maryland, and that a postoffice is kept at that place; that the defendant, Hall J. Howe, resides in the City of Boston, County of Suffolk, and State of Massachusetts, and that Boston, in said County of Suffolk, and State of Massachusetts, is the name of the place wherein a postoffice is kept nearest the place of residence of the defendant, Hall J. Howe, and where he may be found; that the defendant, Oliver T. Crane, resides in the City of Morristown, County of Morris, State of New Jersey, and that Morristown, in the County of Morris, State of New Jersey, is the name of the place wherein a postoffice is kept nearest the place of residence of said Oliver T. Crane, and where the said defendant may be found; that Ebenezer Melvin resides in Grafton, County of Grafton, State of New Hampshire, and that Grafton, in said County of Grafton, State of New Hampshire, is the name of the place wherein a postoffice is kept nearest the place of residence of said Ebenezer Melvin, and where he may be found; that the place of business of defendant, Eastern Kentucky Development Company, is the City, County and State of New York, and that the City of New York County of New
92 York and State of New York, is the name of the place wherein a postoffice is kept nearest the place of business of said defendant, and where its officers and agents reside, and where it and they may be found; that William Nelson Woodruff resides in the City of Hartford, County of Hartford, State of Connecticut, and that Hartford, in the County of Hartford, ans State of Connecticut, is the name of the place wherein a postoffice is kept nearest the place of residence of said defendant, William Nelson Woodruff, and where he may be found; that New York City, County and State, is the place of residence of said defendant, Charles Seldon, and that New York, in the County of New York, and State of New York, is the name of the place wherein a postoffice is kept nearest the place of residence of said Charles Seldon, and where he may be found; that the defendant, Geo. H. Taylor, resides in the City of Norfolk, County of Norfolk, and State of Virginia, and that Norfolk, in said County of Norfolk, and State of Virginia, is the name of the place wherein a postoffice is kept nearest the place of residence of said George H. Taylor, and where he may be found; that the defendant, Vidantees B. Edwards, Trustee, resides in the City of Washington, District of Columbia, and that Washington, in said District of Columbia, is the name of the place wherein a postoffice is kept nearest the
93 place of residence of said defendant, Vidantees B. Edwards, Trustee, and where he may be found; that the defendant, Thomas Dillon, resides in the City of Detroit, County of Wayne, and State of Michigan, and that the City of Detroit, in said County of Wayne, and State of Michigan, is the name of the place wherein a postoffice is kept nearest the place of residence of the said defendant, Thomas Dillon, and where he may be found; that the defendant, Robert Fletcher Rogers, resides in the City of New York, County and State of New York, and that New York, in the County of New York, and State of New York, is the name of the place wherein a postoffice is kept nearest the place of residence of the defendant, Robert Fletcher Rogers, and where he may be found; that the defendant, Walter L.

Richards, resides in Philadelphia, in the County of Philadelphia, and State of Pennsylvania, and that Philadelphia, in said County of Philadelphia, and State of Pennsylvania, is the name of the place wherein a postoffice is kept nearest the place where said defendant, Walter L. Richards, resides and may be found; that the defendants, Hiram S. McConnell and John P. Sherwood, each reside in the County of Beaver, and State of Pennsylvania, but this plaintiff does not know, nor does said Commonwealth's Attorney know, the name of the place wherein a postoffice is kept near-
94 est the place of residence of said defendants, or either of them, or where they, or either of them, resides or may be found; but that Beaver, in said County of Beaver, and State of Pennsylvania, is the county seat of said County, and that a postoffice is kept at said Beaver; that the defendant, Mary E. Rinehart, resides in the County of Effingham, and State of Illinois, but that this plaintiff does not know, nor does said Commonwealth's Attorney know the name of the place wherein a postoffice is kept nearest the place of residence of said defendant, but that Effingham, in said County of Effingham, and State of Illinois, is the county seat of said County, and that a postoffice is kept at said Effingham; that the defendant, Odella Craig, resides in the County of Dearborn, State of Indiana, but that this plaintiff does not know nor does the said Commonwealth's Attorney know, the name of the place wherein a postoffice is kept nearest the place of residence of said defendant, but that Lawrenceburgh, in said County of Dearborn, State of Indiana, is the name of the county seat of said County, and that a postoffice is kept at said Lawrenceburgh; that the defendants, G. G. Hughes and W. N. Pickerill, reside, and each resides, in the City of Indianapolis, County of Marion, and State of Indiana, and that Indianapolis, in said County of Marion, and State of Indiana, is the name of
95 the place wherein a postoffice is kept nearest the place of residence of said defendants, and where they, and each of them, resides and may be found; that the defendant, Sallie Craig, resides at Columbus, in the County of Muscogee, and State of Georgia, and that Columbus, in said County of Muscogee, and State of Georgia, is the name of the place where a postoffice is kept nearest the place of residence of said defendant, Sallie Craig, and where she resides and may be found; that the defendant, A. W. McClure, resides in the City of Nashville, County of Davidson, and State of Tennessee, and that Nashville, in said County of Davidson, and State of Tennessee, is the name of the place wherein a postoffice is kept nearest the place of residence of said defendant, A. W. McClure, and where he resides and may be found.

The plaintiff says that if the defendant, E. T. Craig, is alive, neither it, nor does the said Commonwealth's Attorney, know the country in which he resides, nor the name of the place wherein a postoffice is kept nearest his place of residence or where he may be found.

Plaintiff says that neither it, nor does the said Commonwealth's Attorney, have any personal knowledge of the place of residence of any of the said non-resident defendants, but that the names of

the places hereinbefore stated as being where they, respectively, reside, and the names of the places where a postoffice is
96 kept nearest their places of residence and where they may be found, is stated upon information and belief, obtained from record of the conveyances hereinbefore referred to, and upon other information and belief, but that if the said defendants, or any of them, do not reside at the places, respectively, stated, or if the places respectively stated are not the names of the places where postoffices are kept nearest the place of residence of said defendants, rspectively, and where they may, respectively, be found, then the plaintiff does not know, nor does said Commonwealth's Attorney know, the name of the country in which the said defendants reside, or in which any of them resides, nor does he know the names of the places, or place, where a postoffice is kept nearest the place of residence of said defendants, respectively, or any of them, or where they, or any of them, may be found.

And the plaintiff does not know, nor does said Commonwealth's Attorney know, whether or not the said defendants are, or any of them is, yet alive, nor does it or he know the names of the real representatives of grantees or devisees of those, if any, who may be dead, nor does he know the name of the country, nor the name of the place wherein a postoffice is kept where the said real representatives or grantees or devisees, or others in privity of title of those who may be dead, reside or may be found, or the name of the place wherein a postoffice is kept nearest the place where they, or
97 any of them, reside or may be found.

Plaintiff states that the defendant herein, the Eastern Kentucky Coal Lands Corporation, is a corporation organized and existing under the laws of the Commonwealth of Virginia, and that it is advised, believes and therefore avers, that said defendant, Eastern Kentucky Coal Lands Corporation, is claiming title to, and to be the owner of, all lands hereinbefore in this petition described, and under the grants hereinbefore described, and claims said tracts of land, respectively, and title and ownership thereto, as devolved upon it by deeds from the defendant, Charles B. Hillhouse, and the said Hillhouse as grantor to it, and so claimed on the 24th day of December, 1906, and that the title claimed by the corporate defendant as derived from the defendant, Hillhouse, as having been derived by deeds to the said Hillhouse by others claiming by inheritance, devise or mesne conveyances from those to whom said tracts of land, respectively, were granted as aforesaid by the patents above described respectively; but that neither said corporate defendant nor defendant C. B. Hillhouse, nor any of its or his predecessors in title, or vendors, nor any of them, nor the original patentees aforesaid, nor any one claiming by, through
98 or under them, respectively, have, at any time, after the issuance of the said patents, respectively, and before the filing of this petition, ever caused the said land, or part thereof, or any interest therein, to be listed for assessment or taxation for any purpose whatever in Pike County, or elsewhere either in the States of Virginia or Kentucky, or paid any taxes whatever upon the same,

or any part thereof, or interest therein; and plaintiff states that from the date of the respective grants aforesaid, and for now more than one hundred (100) years next before the filing of the petition, the grantees under patents aforesaid, and persons claiming, or entitled to claim by, through or under them, respectively, have abandoned all claim of title, and for the entire period aforesaid abandoned all claim of title or ownership in, of, to or concerning the said hereinbefore described land, or part thereof, or interest therein, and although the said land in greater part was capable and susceptible of cultivation and improvement, hitherto, at all times and continuously for the period aforesaid, abandoned and relinquished all such land and all intention to possess same, and did not make or assert any claim, or right of title or ownership therein, and none was ever made by the original patentees aforesaid, or persons claiming by, through or under them, respectively, until assertion of
99 pretended right or title claimed to be derived from the said original patentees or persons claiming by, through or under them, respectively, was claimed and asserted by the corporate defendant and the defendant, C. B. Hillhouse, as above herein is stated, and neither the original patentees, nor any of them, nor any person claiming by, through or under them, or any of them ever entered into the possession of, or seated upon, said tracts of land, or any part of them, or any of them.

The defendant, Charles B. Hillhouse, is a non-resident of the State of Kentucky, and as plaintiff believes, now absent therefrom, and that defendant, Charles B. Hillhouse, resides in New York City and County, in the State of New York, and New York, in said County and State, is the name of the place wherein a postoffice is kept nearest to the place where defendant, Charles B. Hillhouse, resides and may be found.

And thereupon the plaintiff says that by the provisions of Section 1 of Article III of an Act of the General Assembly of the Commonwealth of Kentucky, entitled "An Act Relating to Revenue and Taxation," approved March 15, 1906, it is made, became and was the duty of each and every owner or claimant of land in said Commonwealth to pay all taxes which had been asessed, and which should have been assessed, against him, and those under whom he claims, as the owner or claimant of said land, as of the 15th
100 day of September, 1901; the 15th day of September, 1902; the 15th day of September, 1903; the 1st day of September, 1904, and the 1st day of September, 1905; and, if the said owner or claimant, or those under whom he claims, had failed to list said land, or any part thereof, for taxation, as of said dates, or any of them, it should be his duty to have same assessed and listed for taxation in the manner and within the time therein, and in Section 2 of said Act provided, as of each of said dates for which the assessment thereof had been omitted, and to pay the taxes, interest and penalties thereon as provided in said Sections and Article III of the Act aforesaid.

And in Section 1 of said Article III, it is further provided, that if any such owner or claimant, or those under whom he claims

had failed to list such land for assessment and taxation, as of any three of the said above-mentioned dates of September 15, 1901, 1902, 1903, or the 1st day of September, 1904, or the 1st day of September, 1905, or failed to pay the taxes charged, or which should have been charged against him, or those under whom he claims, as the owner or claimant thereof upon said dates for any three of the years for which said assessments were, or should have been made, said owner and claimant, and those under whom he
101 claims, are thereby declared to be delinquent; and it is further in said Act provided that such failure, or either of them, shall be and is cause for forfeiture and transfer to the Commonwealth of Kentucky, the plaintiff herein, of his said claim and title thereto, in a proceeding instituted for that purpose, as in said Article III of the Act aforesaid is provided. But it is further therein provided, that the cause for forfeiture upon the grounds and failures last aforesaid, shall be extinguished if said owner or claimant, or his heirs, representatives or assigns, should, within the time and in the manner in the said Article III provided, cause said land to be assessed for taxation, and on or before March 1, 1907, pay the taxes charged, and which should have been charged against him, or against those under whom he claims, as the owner or claimant thereof, for each and all of said five years for which he, or those under whom he claims, were, by the terms, under the conditions and for the causes in said Act prescribed, declared delinquent, together with the interest and penalties provided by law in case of redemption of land sold for the non-payment of taxes.

And by section 2 of Article III of the said Act, it is provided that ascertainment of the amount of taxes unpaid and the assessment required as aforesaid, by Section 1 of said Article, should be
102 made by the County Court of the county wherein the land lies, upon the application of said owner or claimant by petition, verified by himself or his agent, filed in the said Court on or before January 1, 1907, in which the land sought to be charged shall be described, so as to be identified, and the years for which it was not listed, and the years in which the taxes were not paid, shall be stated, and in which also shall be stated the grant under which he claims, if he derives title from a grant, and the instrument through, or the manner in, which the title devolved upon him, which said Section 2 of Article III aforesaid, prescribes the manner of ascertaining the amount of taxes due, and of making the assessments so previously omitted.

And thereupon the plaintiff avers and says that the owner or claimant of the land hereinbefore described, or of part thereof, or interest therein, under the patents hereinbefore described, has not, nor has any one under whom he or they claim, hitherto at any time or at all, paid the taxes which should have been assessed against him or them, or those under whom he or they claim, as the owner or claimant of said land, or part thereof, or interest therein, as of the 15th day of September, 1901; the 15th day of September, 1902; the 15th day of September, 1903; the 1st day of September,

1904, or the 1st day of September, 1905; nor have the owner
103 or owners, claimant or claimants of the said tract of land, or part thereof, or of interest therein, under said patents or any of them, hitherto, or on or before the 1st day of January, 1907, or at all, listed or caused said land to be listed for assessment and taxation as or for any one or more of said dates, or paid the taxes which should have been charged against him or them, or those under whom he or they claim as the owner or claimant of the said land, or part thereof, or of interest therein, upon said dates or of any one or more of them, or paid any taxes, interest or penalties whatever upon the same, or any part thereof.

And the plaintiff is advised, and therefore avers and says, that by reason of the aforesaid failure of the owner or owners, claimant or claimants, of the said tract or tracts of land, or of part thereof, or interest therein, under said patents, to pay the taxes which should have been assessed against him or them, or those under whom he or they claim as the owner or claimant thereof, as of the 15th day of September, 1901; the 15th day of September, 1902; the 15th day of September, 1903; the 1st day of September, 1904; the 1st day of September, 1905, and the failure of the owner or owners, claimant or claimants, of said tract or tracts of land, or of part thereof, or interest therein, under said patents, to list such land, or part thereof, or interest therein, for assessment and taxa-
104 tion as of the 15th day of September, 1901; the 15th day of September, 1902; the 15th day of September, 1903; the 1st day of September, 1904; 1st day of September, 1905, and the failure of said owner or owners, claimant or claimants of the said tract or tracts of land, or of part thereof, or interest therein, under said patents, to pay the taxes which should have been charged against him, or them, or those under whom he, or they, claim, as the owner or claimant thereof as of the said 15th day of September, 1901; 15th day of September, 1902; 15th day of September, 1903; 1st day of September, 1904; 1st day of September, 1905, or for any three of the said years, and for which the assessments in the said Act provided should have been made, said owner or owners, claimant or claimants of said tract or tracts of land, or of part thereof or interest therein, under said patents, and the said tract and tracts of land, became and are delinquent, and that by reason of the aforesaid failure of the owner or owners, claimant or claimants of the said tract or tracts of land, or part thereof, or interest therein, under said patents, to pay the taxes which should have been assessed against him, or them, or those under whom he or they claim, as the owner or claimant of said land, as of the dates aforesaid, and to list or cause the same to be assessed and listed
105 in the manner and within the time aforesaid, viz: on or prior to January 1, 1907, as of each of said dates, that the said tract and tracts of land and the title and all claim of title thereto, or interest therein, of the owner or owners thereof, or part thereof, or interest therein, and of those under whom he or they claim, under the patents aforesaid, or any of them, has become and is the subject of forfeiture and transfer to the plaintiff, the Commonwealth

of Kentucky, of the claim and title of the owner or owners, claimant or claimants, under said patents, or any of them, of the said land hereinbefore described, and all and every part thereof and all interest therein.

The plaintiff further says that aforesaid original patentees and owners of said land, are and each is dead; and the said Commonwealth's Attorney does not know except as hereinbefore stated whether or not the said patentees and once owners of said land, or any of them, died intestate, or died leaving a valid last will and testament; or whether the title vested in them, or any of them, by the said patents, or any of them, or whether the tract or tracts of land therein respectively described, descended to or vested in the heir or heirs at law of the said patentees aforesaid, or any of them, or
106 was devised by them, or any of them, in whole or part, to or among them, or others; or whether the said patentees, or any of them, conveyed, or otherwise transferred the land or title, or part thereof, or interest, to others, or if so to whom, nor does said Commonwealth's Attorney know in whom the title or claim to said lands originally vested in said patentees, or any of them, is now vested or claimed through or under the aforesaid patentees, or any of them, to the whole or any part of said land, or interest therein; except that claimed by the corporate defendant; nor does the said Commonwealth's Attorney know or have knowledge or information whatever either as to the name, place of residence or country in which the owner or owners, claimant or claimants of said land, or part thereof, or interest therein, under said patents, other than the corporate defendant and Charles B. Hillhouse, resides or may be found, or as to the name of the place where the postoffice is kept nearest to the place where such unknown defendant or defendants, claimant or claimants, or any of them, of said land or part thereof, or interest therein, under said patents, resides or may be found except as herein before stated. And for the reasons stated, the said unknown owner or owners, claimant or claimants of the said tract of land, or part thereof, or interest therein, under said patents, are designated as the "unknown defendant and unknown
107 defendants," the "unknown owner and unknown owners," and "unknown claimant and unknown claimants," and as such are made defendants herein for the purpose of declaring the title and claim of said defendant or defendants forfeited to the plaintiff, the Commonwealth of Kentucky, and of selling the same in the manner provided and with the effect declared in said Article III of the aforesaid Act relating to Revenue and Taxation.

And plaintiff files as part of this petition, marked as hereinbefore stated, duly certified copies of the aforesaid grants and patents to the aforesaid patentees, upon which the title or claims to said land sought herein to be forfeited is based, and expressly hereby avers and says that no other title, claim or possession or continuity thereof, whether owned or claimed by the unknown owner or owners, claimant or claimants thereof, in whole or part, or interest therein, by defendants herein or by others, is sought to be forfeited, or in any wise or manner affected by this suit.

Plaintiff further says that, except as hereinbefore stated, it does not know, nor does said Commonwealth's Attorney know, the names or places of residence of defendants, or any of them, nor the name of the place wherein a postoffice is kept nearest to the place where they, or any of them, reside or may be found.

And, except as hereinbefore stated, the plaintiff does not know, nor does said Commonwealth's Attorney know, the names or
108 places of residence of the, or any of the, heirs at law, devisees, or grantees, if any, of said patentees or grantees, or any of them.

Wherefore, the plaintiff prays judgment that the tracts of land hereinbefore described, and all title or claim thereof, or other claim of the defendants, Eastern Kentucky Coal Lands Corporation, Charles B. Hillhouse, J. C. Twyman, Cortland Van Camp, Isaac L. Casy, Alfred Elmer Mills, Union Trust Company of Philadelphia, John V. Le Moyne, Hall J. Howe, Oliver T. Crane, Ebenezer Melvin, Eastern Kentucky Development Company, William Nelson Woodruff, Charles Seldon, George H. Taylor, Vidantees B. Edwards, Trustee, Robert Fletcher Rogers, Thomas Dillon, Walter L. Richards, James W. Linville, Samuel Fox, Maria Fox, Elizabeth Lansdale, Robert Walsh, Joseph Walsh, A. M. Walsh, Isabelle Walsh, E. Walsh, Mariah Walsh, Thursa Walsh, Fannie Walsh, Oliver Walsh, Taylor Walsh, Hiram S. McConnell, John P. Sherwood, Mary E. Rinehart, Odella Craig, Mary A. Craig, Cordelia F. Combs, Mary H. Craig, Lide H. Craig, Rose E. Craig, Rose K. Craig, G. G. Hughes, W. N. Pickerill, W. T. Craig, Joseph D. Craig, A. W. McClure, Sallie Craig and E. T. Craig, and the unknown defendant and unknown defendants, and the unknown owner and unknown owners, the unknown claimant and unknown claimants, thereof, and of those under whom they claim, and those claiming by, through and
109 under them under said patents, or any of them, of, to or concerning the said land, or part thereof, or interest therein, be declared forfeited, and the title and all claim of the said defendants, and those under whom they claim, and those claiming by, through and under them, and each and all of them, and the unknown defendant and unknown defendants, and the unknown owner and unknown owners, unknown claimant and unknown claimants thereto, under said patents, and each and all of them, and those under whom they claim, and each and all of them, be vested in the plaintiff without execution of deed or other instrument; and for such other and further proceedings and relief as the plaintiff is entitled to and as provided and declared in the further provisions of Article III of the said Act, approved March 15, 1906, entitled "An Act Relating to Revenue and Taxation," to the end and with the purpose and effect that such title and claim so forfeited to and vested in the plaintiff and not redeemed or purchased back by the defendants herein named, who shall establish a title thereto in himself or themselves upon which he or they could maintain an action of ejectment, and who shall pay a sum equal to the amount of the unpaid taxes charged and that ought to have been charged against said defendant or defendants and those under whom he or

they claim, as the owner or claimant of said land, for fifty years, together with interest thereupon at the rate of fifteen
110 per cent. per annum from the time the said unpaid taxes for said several years were due, and the costs of the proceedings including a reasonable attorney fee, to be fixed by the Court as provided in said Article III, shall be transferred to and vested in each and every person, for so much thereof as such person, or those under whom he claims, has had the actual adverse possession for five years next preceding the judgment of forfeiture herein prayed, under claim or color of title derived from any source whatsoever, and who, or those under whom he claims, shall have paid taxes thereupon for the five years in which such possession may have been held, as provided in Section 6, Article III, of the Act aforesaid; and that the title so forfeited and vested in the plaintiff, and remaining in it, if any, and not redeemed or purchased back in the manner aforesaid, and after the operation and effect of the provisions of Section 6 of the said Act transferring the title and claim so forfeited to and vested in plaintiff to each and every person, for so much thereof as such person or those under whom he claims, has had actual adverse possession for five years next preceding judgment of forfeiture, under claim, or color of title, derived from any source whatsoever, be sold in the manner provided in Article III aforesaid.

And it prays for all general and special relief.

111 In verification of all which, the plaintiff, the Commonwealth of Kentucky, has caused this petition to be filed and signed by J. F. Butler, Commonwealth's Attorney in and for the Twenty-fourth Circuit Court Judicial District of Kentucky, and such attorney for the Pike Circuit Court therein.

COMMONWEALTH OF KENTUCKY,
By JOHN F. BUTLER,
Commonwealth's Attorney in and for the Twenty-fourth Circuit Court Judicial District of Kentucky.

STATE OF KENTUCKY,
County of Pike:

[SEAL.]

The affiant J. F. Butler, says that he is Commonwealth's Attorney in and for the Twenty-fourth Circuit Court Judicial District of Kentucky, embracing the County of Pike, duly qualified and now acting as such; and that the statements contained in the foregoing petition are true, as he verily believes.

JOHN F. BUTLER.

Subscribed and sworn to before me by J. F. Butler, this 3 day of June, 1907.

My commission as Notary Public expires on the 3 day of June, 1910.

J. S. CLINE,
Notary Public, Pike Co., Ky.

112 Pike Circuit Court.

COMMONWEALTH OF KENTUCKY, Plaintiff,
against
EASTERN KENTUCKY COAL LANDS CORPORATION and Others, Defendants.

Warning Order.

The defendants Charles B. Hillhouse, Cortland Van Camp, Isaac L. Casy, Alfred Elmer Mills, Union Trust Company, of Philadelphia, John V. Le Moyne, Hall J. Howe, Oliver T. Crane, Ebenezer Melvin, Eastern Kentucky Development Company, William Nelson Woodruff, Charles Seldon, George H. Taylor, Vidantees B. Edwards, Trustee, Robert Fletcher Rogers, Thomas Dillon, Walter L. Richards, James W. Linville, Samuel Fox, Maria Fox, Elizabeth Lansdale, Robert Walsh, Joseph Walsh, A. M. Walsh, Isabelle Walsh, E. Walsh, Mariah Walsh, Thursa Walsh, Fannie Walsh, Oliver Walsh, Taylor Walsh, Hiram S. McConnell, John P. Sherwood, Mary E. Rinehart, Odella Craig, Mary A. Craig, Cordelia F. Combs, Mary H. Craig, Lide H. Craig, Rose E. Craig, Rose K. Craig, G. G. Hughes, W. N. Pickerill, W. T. Craig, Joseph D. Craig, A. W. McClure, Sallie Craig and E. T. Craig, are, and each is, warned to appear in this Court in thirty days after the date of entry hereof, and at the first rule day occurring after the expiration of said thirty days, to answer the petition of the plaintiff, the Commonwealth of Kentucky;

113 and A. E. Auxier a regular practicing attorney of this Court, is appointed to correspond with said defendants, and each and all of them, and being present accepted said appointment; and further, the unknown defendant and unknown defendants, unknown owner and unknown owners, unknown claimant and unknown claimants, and each and all of them, of the certain tract or tracts of land in the petition described, under the survey and grants in the petition described, and each and all of them, copies of which said grants are attached to the petition as part hereof, and the unknown owner and unknown owners, unknown claimant and unknown claimants, of a part thereof, or interest therein, under said survey and patents, and each and all of them, are and each is warned to appear in this Court in thirty days after the date of entry hereof, and at the first rule day occurring after the expiration of said thirty days to answer the petition of the plaintiff, Commonwealth of Kentucky, and A. E. Auxier, a regular practicing attorney of this court, is appointed to correspond with said unknown defendant and unknown defendants, unknown claimant and claimants, unknown owner and unknown owners aforesaid, and being present accepted said appointment.

114 Witness my hand as Clerk of said Court, this 3 day of June, 1907.

J. B. POLLEY,
Clerk Pike Circuit Court.
By A. D. CLINE, *D. C.*

Filed June 3, 1907.
J. B. POLLEY, *Clk.*
By A. D. CLINE, *D. C.*

115 Pike Circuit Court. No. —. Petition in Equity. Commonwealth of Kentucky vs. Eastern Kentucky Coal Lands Corporation, and Others. Petition filed — day of ——, 1907, and immediately I posted copy of petition and exhibits thereto attached, at front door of the Court House in Pikeville, Ky., at — o'clock —. m., on said day. Summons and one copy to Pike county. Summons and one copy to Jefferson county. Warning order made on petition. —— ——, Clerk.

116 EXHIBIT No. 1.

Beverly Randolph, Esq., Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That by virtue and in consideration of seven Land Office Treasury Warrants numbers 7278-7277-7276 issued on the 14th day of October, 1781, number 13015 issued the 26th day of July, and numbers 14172-14170 & 14171 issued the 11th day of September, 1782.

There is granted by said Commonwealth of —— unto John Walker, Robert Johnson, and Reuben Twyman, a certain Tract or Parcel of Land, containing seven thousand five hundred and thirty-seven acres, by survey bearing date the 17th day of April, one thousand seven hundred and eighty-seven lying and being in the County of Bourbon, on the South side of Big Sandy and bounded as followeth to-wit: Beginning at two poplars and hickory on the bank of Big Sandy where the county line strikes said Sandy river, thence down Sandy north 20′ west 160 poles, west 20 poles, South 50 poles, West 30, poles, North 60′ West 40 poles, North 32′ West 160 poles, North 85′, West 160 poles to the mouth of a branch, North 18′, East 60 poles North 55′, West 80 poles South 35′ West
117 530 poles to two ashes, sugar tree and Lynn, leaving Sandy and running South 45′ West 1101 poles ¾ to two white oaks, thence South 45′ East 1131, poles to a chestnut, North 45′ East 1101¾ poles to the becinning.

With all its appurtenances: To have and to hold the said tract or parcel of land with its appurtenances to the said John Walker, Robert Johnson and Reubin Twyman and their heirs forever. In witness whereof, the said Beverly Randolph Esq., Governor of the Commonwealth of Virginia, hath hereunto set his hand and caused the lesser seal of the Commonwealth to be affixed at Richmond on the 16th day of December in the year of our Lord one thousand seven hundred and eighty nine and of the Commonwealth the fourteenth.

BEVERLY RANDOLPH.

A copy. Attest:
S. W. HAGER, *Auditor.*

EXHIBIT No. 2.

Beverly Randolph, Esq., Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That by virtue and in consideration of part of three land office Treasury warrants Numbers, 18096, 18084, & 18097, issued the 26th of July, 1783, There is granted by said Commonwealth unto John Craig, assignee of Mary Walker,

A certain tract or parcel of land containing Four Thou-
118 sand and Sixty acres, by survey bearing date the 18th day of April, one thousand seven hundred and eighty seven, lying and being in the county of Bourbon on the South West side of Big Sandy and bounded as followeth to-wit: Beginning at the lower side of the mouth of Craigs creek on the bank of Sandy at a poplar and ash, thence down Sandy and binding thereon North 15′ East 240 poles, North 85 (West 100 Poles South 42′ West 92 poles South 60′ West 52 poles South 75′ West 86 poles North 20 West 280 poles North 56′ West 360 poles North 45′ West 180 poles North 25′ West 204 poles to two sugar trees thence South 45′ West 530 poles to a stake thence South 45′ East 1200 poles to two maples and a poplar, thence North 45′ East 341 poles to the beginning. With its appurtenances: To have and to hold the said tract or parcel of land with its appurtenances to the said John Craig and his heirs forever, in witness whereof, the said Beverly Randolph Esq. Governor of the Commonwealth of Virginia hath hereunto set his hand and caused the lesser seal of the said Commonwealth to be affixed at Richmond on the 4th day of February in the year of our Lord one thousand seven hundred and ninety and of the Commonwealth the fourteenth.

[SEAL.] BEVERLY RANDOLPH.

A copy. Attest:

S. W. HAGER, *Auditor.*

119 (EXHIBIT No. 3.)

Beverly Randolph, Esq., Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That by virtue and in consideration of a land office treasury warrant No. 18146, and part of No. 18093, issued the 26th day of July also part of Nos. 19403, 19404, issued the 16th day of September all in the year 1783, there is granted by said Commonwealth unto John Craig assignee of Mary Walker a certain Tract or Parcel of Land, containing Five Thousand nine hundred and forty acres by survey bearing date the 18th day of April one thousand seven hundred and 87 lying and being in the county of Bourbon on the South-West side of Big Sandy river and bounded as followeth to-wit: Beginning at the lower corner on Sandy of said Walker's survey of Four Thousand and Sixty acres at two sugar trees, thence

down Sandy as it meanders N. 35 E. 114 poles N. 5 W. 234 poles N. 25, W. 160 poles N. 45, W. 180 poles N. 60 W. 80 poles N. 75, W. 140 poles N. 40 W. 212 poles to the mouth of Elkhorn creek N. 50 W. 108 poles N. 65, W. 170 poles N. 45, W. 180 poles N. 60, W. 80 poles to a walnut, sugar tree, hickory, and Lynn thence; S. 45, W. 672 poles to a white oak, thence S. 45 E. 1180 poles
120 crossing Elkhorn to a stake, corner to said Walker's 4060 acre survey; thence with the line of said survey N. 45 E. 530 poles to the beginning.

With its appurtenances: To have and to hold the said tract or parcel of land with its appurtenances to the said John Craig and his heirs forever in witness whereof the said Beverly Randolph Esq. Governor of the Commonwealth of Virginia hath hereunto set his hand and caused the lesser seal of the said Commonwealth to be affixed at Richmond on the 2nd day of Feb. in the year of our Lord one thousand seven hundred and 90 and of the Commonwealth the 14th.

[SEAL.] BEVERLY RANDOLPH.

A copy. Attest:

S. W. HAGER, *Auditor.*

(EXHIBIT No. 4.)

Beverly Randolph, Esq., Governor of the Commonwealth of Virginia, to all to whom these presents come, Greeting:

Know ye, That by virtue and in consideration of two Land Office Treasury Warrants Nos. 20744 & 20745 issued the 14th day of Nov. 1783 there is granted by said Commonwealth unto Daniel Duvall & Charles Marshall ass'ee of said Duvall a certain Tract or Parcel of Land, containing twenty thousand acres by survey, bearing
121 date the 17th day of April, one thousand seven hundred and eighty seven, lying and being in the county of Bourbon, on the waters of Big —— and bounded as followeth, to-wit:

"Beginning at the upper corner at the bank of Sandy of a survey of 4,060 acres made in the name of Merry Walker; said survey is the upper survey on Sandy that was made for said Walker by virtue of part of his entry of 162,518 acre entry that was not withdrawn to begin at the lower side of the mouth of Craigs Creek at an ash and poplar; thence up Sandy with its meanders; S. 26. E. 160 poles; N. 68, E. 160 poles; S. 35, E. 120 poles; to two ashes, a sugar tree and lynn, this being the lower corner on Sandy of a survey made for John Walker & Co., that was located in the same place that John Fowler's entry was withdrawn from; thence with the line of said survey S. 45 W. 1101¾ poles to two white oaks; thence with another of his lines S. 45 degrees, E. 1131 poles to a chestnut tree; thence S. 45, W. 1969 poles to a stake; thence N. 45 degrees, W. 1450 poles to two sugar trees in the line of the 40518 acres that was withdrawn from the middle of the said Walker's entry; thence with a line of the same N. 45 degrees, E. to the corner

of the 20,000 acres surveyed for said Walker, and with the
122 line of said survey the same course to the corner of the first mentioned 4,060 acres survey, and with the line of the same the same course, the whole amounting to 2,939¾ poles to the beginning."

With its appurtenances: To have and to hold the said tract or parcel of land, with its appurtenances, — the said Daniel Duvall & Charles Marshall and their heirs forever.

In witness whereof, the said Beverly Randolph, Esq., Governor of the Commonwealth of Virginia, hath hereunto set his hand, and caused the lesser Seal of the Commonwealth to be affixed at Richmond on the 14th day of December, in the year of our Lord, 1789, and of the Commonwealth the 14th.

BEVERLY RANDOLPH.

A copy. Attest:
[SEAL.] S. W. HAGER, *Auditor.*

EXHIBIT No. 5.

Beverly Randolph, Esq., Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That by virtue and in consideration of two Land Office Treasury Warrants Nos. 21557 & 21559 issued on the 23rd
123 day of December, 1783, there is granted by said Commonwealth unto Richard Adams, assignee of Reuben Slaughter a certain tract or parcel of Land, containing twenty thousand (20,000) acres, by survey, bearing date the 18th day of April, one thousand seven hundred and eighty seven; lying and being in the county of Bourbon on the waters of Big Sandy, and bounded as followeth to-wit:

"Beginning at the most westerly corner of Daniel Duvall's and Charles Marshall's survey of 20,000 acres at two sugar trees; thence with the line of the same, south 45 degrees, east 1460 poles to a stake; thence south 45 degrees, west 2191¾ poles to three chestnut trees; thence north 45, west 1460 poles to two sugar trees; thence north 45 degrees, east 2,191¾ poles to the beginning." With its appurtenances: To have and to hold the said tract or parcel of Land, with its appurtenances, to the said Richard Adams and his heirs forever.

In witness whereof, the said Beverly Randolph, Esq., Governor of the Commonwealth of Virginia, hath hereunto set his hand, and caused the lesser Seal of the said Commonwealth to be affixed at Richmond on the 24th day of February, in the year of our Lord, 1790, and of the Commonwealth the 14th.

BEVERLY RANDOLPH.

A copy. Attest:
[SEAL.] S. W. HAGER, *Auditor.*

124 EXHIBIT No. 6.

Beverly Randolph, Esq., Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That by virtue and in consideration of three Land Office Treasury Warrants Nos. 18096, 18088, and 18086 issued the 26th day of July, 1783 there is granted by said Commonwealth unto John Craig, assignee of Merry Walker, a certain tract or parcel of land, containing twenty thousand (20,000) acres, by survey, bearing date the 19th day of April, 1787; lying and being in the County of Bourbon, on the waters of Big Sandy, and bounded as followeth, to-wit:

"Beginning at a white oak, it being the west corner of said Walker's survey of 5,940 acres, and with the back line of said survey south 45, east 1180 poles to a 4060 acre survey of said Walker's and with the back line of said survey the same course 1,200 poles to the south corner of said survey, two maples and poplar; thence south 45, west 1344 poles to a sugar tree, poplar and walnut; thence north 45, west 2,380 poles to two red oaks; thence north 45, east 1,344 poles to the beginning." With its appurtenances; to have and to hold the said tract or parcel of Land, with its appurtenances,
125 to the said John Craig and his heirs forever.

In witness whereof, the said Beverly Randolph, Esq., Governor of the Commonwealth of Virginia, hath hereunto set his hand, and caused the lesser Seal of the said Commonwealth to be affixed at Richmond on the 4th day of February, in the year of our Lord, 1790, and of the Commonwealth the 14th.

BEVERLY RANDOLPH.

A copy. Attest:
[SEAL.] S. W. HAGER, *Auditor.*

126 EXHIBIT No. 7.

Isaac Shelby, Esq., Governor of the Commonwealth of Kentucky, To all to whom these presents shall come, Greeting:

Know ye, that by virtue and in consideration of seven Treasury Warrants Nos. 21626, 21627, 21628, 21632, 21633, 21640 and 22008 there is granted by the said Commonwealth unto John May and David Ross a certain tract or parcel or land, containing 40,418 acres, by survey, bearing date the 16th day of March, 1788, lying and being in the County of Bourbon, on Shelby's creek, a western branch of Sandy, and bounded as followeth, to-wit:

"Beginning at two red oaks, this being the west corner of a survey of 20,000 acres, made the 19th day of April, 1787, for Merry Walker; thence south 45, east 2380 poles to a sugar tree, poplar and walnut, said Walker's south corner; thence south 45', west 2717 poles to two sugar trees, a poplar, and lynn at the head of a spring; thence north 45, west 1120 poles to a large lick, the same course continued in all 2,380 poles crossing several branches of Shelby's

creek to two chestnut oaks; thence north 45, west 2717 poles
127 crossing Main Shelby's creek to the beginning." With its appurtenances: To have and to hold the said tract or parcel of Land w its appurtenances, to the said John May and David Ross and their heirs forever.

In witness whereof, the said Isaac Shelby, Esq., Governor of the Commonwealth of Kentucky, hath set his hand, and caused the Seal of the said Commonwealth to be affixed at Frankfort, on the 11th day of April, in the year of our Lord, 1794, and of the Commonwealth the second.

ISAAC SHELBY.

By the Governor:

JAMES BROWN,
Secretary of State.

A copy. Attest:
[SEAL.] S. W. HAGER, *Auditor.*

128 EXHIBIT No. 8.

Beverly Randolph, Esq., Governor of the Commonwealth of Virginia. To all to whom these presents shall come, Greeting:

Know ye, That by virtue and in consideration of part of a Land Office Treasury Warrant No. 18084 issued the 26th day of July, 1783, there is granted by the said Commonwealth unto John Craig ass'ee of Merry Walker, a certain tract or parcel of land, containing 5,000 acres, by survey, bearing date the 22nd day of April, 1787, lying and being in the County of Bourbon on the waters of Big Sandy River and bounded as followeth, to wit:

"Beginning at two chestnut oaks, being the west corner of the 40,518 acres that *was* withdrawn from the said entry; thence south 45, east 1190 poles to a sugar tree; thence south 45, west 672 poles to a stake; thence north 45, west 1190 poles to two white oaks; thence north 45, east 672 poles to the beginning." With its appurtenances to have and to hold the said tract or parcel of land, with its appurtenances, to the said John Craig and his heirs forever.

In witness whereof, the said Beverly Randolph, Esq., Governor of the Commonwealth of Virginia, hath hereunto set his hand,
129 and caused the lesser Seal of the said Commonwealth to be affixed at Richmond, on the 4th day of February, in the year of our Lord, 1790, and of the Commonwealth the 14th.

BEVERLY RANDOLPH.

A copy. Attest:
S. W. HAGER, *Auditor.*

EXHIBIT No. 9.

Beverly Randolph, Esq., Governor of the Commonwealth of Virginia. To all to whom these presents shall come, Greeting:

Know ye, That by virtue and in consideration of part of Land Office Treasury Warrant No. 18087 issued the 26th day of July,

1783, there is granted by the said Commonwealth unto John Craig, assignee of Merry Walker a certain tract or parcel of land, containing 5,000 acres, by survey, bearing date the 23rd day of April, 1787; lying and being in the county of Bourbon, on the waters of the Big Sandy river, and bounded as followeth, to-wit:

"Beginning at a sugar tree, the east corner of said Walker's survey of 5,000 acres, and with the line of said survey, south 45,
130 west 672 poles to a stake; thence south 45, east 1190 poles to two white oaks; thence north 45, east 672 poles to two sugar trees, a poplar, and lynn; thence north 45, west 1120 poles to a large Lick, continued in all 1190 poles to the beginning." With its appurtenances: to have and to hold the said tract or parcel of Land with its appurtenances, to the said John Craig and his heirs forever.

In witness whereof, the said Beverly Randolph, Esq., Governor of the Commonwealth of Virginia, hath hereunto set his hand, and caused the lesser Seal of the said Commonwealth to be affixed at Richmond on the 2nd day of February, in the year of our Lord, 1790, and of the Commonwealth the 14th.

[SEAL.] BEVERLY RANDOLPH.

A copy. Attest:
S. W. HAGER, *Auditor.*

Exhibit No. 10.

Beverly Randolph, Esq., Governor of the Commonwealth of Virginia, To all to whom these presents shall come, Greeting:

Know ye, That by virtue and in consideration of six Land
131 Office Treasury Warrants Nos. 18124, 18128, 18100, issued July 26, 1783, and Nos. 19351, 19403, and 19404 issued September 16, 1783, there is granted by the Commonwealth of Virginia unto John Craig, ass'ee of Merry Walker a certain tract or parcel of land, containing 20,000 acres, by survey, bearing date the 24th day of April, 1787, and lying and being in the County of Bourbon, on the waters of the Big Sandy and bounded as followeth, to wit:

"Beginning at two white oaks, it being the west corner of said Walker's survey of 5,000 acres; thence with said survey, south 45, east 1190 poles crossing some of the branches of Shelby's creek to the west corner of another survey of 5,000 acres in the name of said Walker, and with the line of said survey the same course 1190 poles to two white oaks; thence south 45, west 1,344 poles to two red oak*d*; thence north 45, west 2380 poles crossing some of the branches of Shelby's creek to two white oaks; thence north 45, east 1344 poles to the beginning." With its appurtenances: to have and to hold the said tract or parcel of land, with its appurtenances, to the said John Craig and his heirs forever.

In witness whereof the said Beverly Randolph, Esq., Gov-
132 ernor of the Commonwealth of Virginia, hath hereunto set his hand, and caused the lesser Seal of the said Common-

wealth to be affixed at Richmond on the 4th day of February, in the year of our Lord, 1790, and of the Commonwealth the 14th.

[SEAL.] BEVERLY RANDOLPH.

A copy. Attest:
S. W. HAGER, *Auditor.*

EXHIBIT No. 11.

Henry Lee, Esq., Governor of the Commonwealth of Virginia, To all to whom these presents shall come, Greeting:

Know ye, That by virtue and in consideration of a Land Office Treasury Warrant No. 17214 issued the 23rd day of June, 1783, there is granted by said Commonwealth unto Benjamin Robinson, Richard Young and John Robinson a certain tract or parcel of land, containing 14,280 acres, by survey, bearing date the 13th day of April, 1787, lying and being in the County of Bourbon, on the Big Sandy river and bounded as followeth, to wit:

"Beginning at a walnut, sugar tree, hickory, and lynn,
133 lower corner of an entry of 162,518 acres in the name of Merry Walker; thence with the lower line of said entry south 45, west 2,500 poles crossing Shelby Creek to two white oaks; thence north 45, west 1024 poles to two white oaks; thence north 45, east 2,200 poles to three sugar trees on the bank of Sandy; thence up Sandy as it meanders south 246 poles, south 85, east 172 poles; north 70, east 236 poles; south 20, each 80 poles; south 35, west 140 poles, south 45, east 196 poles, south 30, east 160 poles; north 35, east 100 poles to the mouth of Shelby's creek, continued 180 poles further south 80, east 72 poles; south 60, east 160 poles to the beginning." With its appurtenances: to have and to hold the said tract or parcel of land, with its appurtenances, to the said Benjamin Robinson, Richard Young, and John Robinson and their heirs forever.

In witness whereof, the said Henry Lee, Esq., Governor of the Commonwealth of Virginia, hath hereunto set his hand, and caused the lesser Seal of the said Commonwealth to be affixed at Richmond on the 21st day of January, in the year of our Lord, 1792, and of the Commonwealth the 16th.

HENRY LEE.

A copy. Attest:
[SEAL.] S. W. HAGER, *Auditor.*

134 EXHIBIT No. 12.

Henry Lee, Esq., Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That by virtue and in consideration of three exchanged Land Office Warrants Nos. 16, 17, 18, issued the 29th day of July, 1783, there is granted by said Commonwealth unto John Weagles-worth and Richard Young a certain tract or parcel of land, contain-

ing 16,000 acres, by survey, bearing date the 3rd day of May, 1787, lying and being in the county of Bourbon, on the waters of Big Sandy river and bounded as followeth to-wit:

"Beginning at two white oaks, the south corner of Benjamin Robinson and Richard Young and John Robinson survey of 14,280 acres, and in the line of Merry Walker's entry of 162,518 acres, and with said Walker's line south 45, west 2,500 poles crossing several small branches of Shelby's creek to two sugar trees; thence north 45, west 1,024 poles to two chestnut oaks; thence north 45, east 2,500 poles to two white oaks; thence south 45, east 1,024 poles to the beginning." With its appurtenances: to have and to hold the said tract or parcel of land with its appurtenances, to the said
135 John Weaglesworth and Richard Young and their heirs forever.

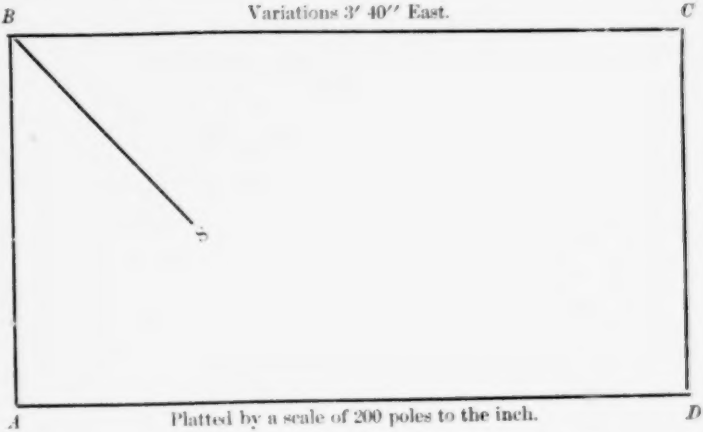
In witness whereof, the said Henry Lee, Esq., Governor of the Commonwealth of Virginia, hath hereunto set his hand, and caused the lesser Seal of the said Commonwealth to be affixed at Richmond on the 21st day of January, in the year of our Lord, 1792, and of the Commonwealth the 16th.

HENRY LEE.

A copy. Attest:

[SEAL.] S. W. HAGER, *Auditor.*

EXHIBIT No. 13.



136 MAY 14TH, 1787.

Survey for Michael Ryon, Assee., etc. 10,000 acres, of land by virtue of an Entry made December 11th, 1786, on a Treasury Warrant No. 8569, situate, lying and being in the County of Bourbon, on the waters of Big Sandy and bounded as followeth, to-wit:

"Beginning at A. two sugar trees, being the south corner of I. Weaglesworth and Richard Young's survey of 16,000 acres in the

line of Merry Walker's entry of a 162,518 acres, and with said Walker's line; south 45, west 1000 poles to a white oak; thence north 45, west 1,600 poles; to two chestnut trees; thence north 45, east 1000 poles to a white oak; thence south 45, east 576 poles to Weaglesworth and Young's corner, and with their line same course continued in all 1,600 poles to the beginning."

GEORGE LEWIS, *D. S. B. C.*
JAMES GARRARD, *S. B. C.*

STATE OF KENTUCKY,
County of Bourbon, set:

I, Pearce Paton, Clerk of Bourbon County Court, Ky., do certify the foregoing is a true and correct copy of the survey to
137 Michael Ryon, etc., recorded in Surveys A, page 73 in my office.

Given under my hand this 20th day of May, 1907.

PEARCE PATON, *C. B. C. C.*

(Michael Ryon, 10,000 acre survey.)

EXHIBIT No. 14.

Henry Lee, Esq., Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That by virtue and in consideration of a Land Office Treasury Warrant No. 14,687 issued October 23, 1782 there is granted by said Commonwealth unto William Robinson, Michael, Jr., John Robinson, Benjamin Robinson, Mary McGee, Betsy Robinson, Michael Robinson, Henry Robinson, James Robinson, John Robinson, William McGee and Thomas McGee a certain tract or parcel of land, containing 15,246 acres, by survey, bearing date the 1st day of May, 1787, lying and being in the county of Bourbon, on the water of the Big Sandy and bounded as followeth, to-wit: "Beginning at three sugar trees, lower corner of Benjamin Robinson & Company's survey of 14,280 acres; thence with the lower line
138 of said survey, south 45, west 220 poles to their west corner, two white oaks; thence north 45, west 1108 and 8 poles to two sugar trees; thence north 45, east 220 poles to a poplar, thence south 45, east 1108 and 8 poles to the beginniing." With its appurtenances: to have and to hold the said tract or parcel of land, with its appurtenances, to the said William Robinson, Benjamin Robinson, Michael Robinson, Jr., John Robinson, Mary McGee, Betsy Robinson, Michael Robinson, Henry Robinson, James Robinson, John Robinson, William McGee, and Thomas McGee and their heirs forever.

In witness whereof, the said Henry Lee, Esq., Governor of the Commonwealth of Virginia, hath hereunto set his hand, and caused the lesser Seal of the said Commonwealth to be affixed at Richmond on the 21st day of January, in the year of our Lord, 1792, and of the Commonwealth the 16th.

A copy. Attest:
[SEAL.] S. W. HAGER, *Auditor.*

139 EXHIBIT No. 15.

Isaac Shelby, Esq., Governor of the Commonwealth of Kentucky, to all to whom these presents shall come, Greeting:

Know ye, That by virtue and in consideration of two Land Office Treasury Warrants Nos. 16710 and 16711 there is granted by the said Commonwealth unto Preeson Boudain and Richard Young a certain tract or parcel of land, containing 5,000 acres, by survey, bearing date the 5th day of May, 1787, lying and being in the County of Bourbon, on the waters of Big Sandy river and bounded as followeth, to-wit:

"Beginning at two white oaks, it being the west corner of Benjamin Robinson and Co.'s survey of 14280 acres and corner to Weaglesworth and Young's survey of 16,000 acres; thence with said Weaglesworth and Young's line; south 45, west 1,300 poles to a sugar tree; thence north 45, west 615 3/10 poles to a poplar; thence north 45, east 13000 poles crossing some small branches to two white oaks in the line of William Robinson & Company's survey of 15,246 acres; thence with the line of said survey, south 45, east 615 3/10 poles to the beginning."

With its appurtenances: to have and to hold the said tract or parcel of land with its appurtenances, to the said Preeson Boudain
140 and Richard Young, and their heirs forever.

In witness whereof, the said Isaac Shelby, Esq., Governor of the Commonwealth of Kentucky, hath hereunto set his hand, and caused the Seal of the Commonwealth to be affixed at Lexington, on the 8th day of March, in the year of our Lord, 1793, and of the Commonwealth the first.

ISAAC SHELBY.

By the Governor:

JAMES BROWN,
Secretary of State.

A copy. Attest:
[SEAL.] S. W. HAGER, *Auditor.*

141 EXHIBIT No. 16.

Beverly Randolph, Esq., Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That by virtue and in consideration of three Land Office Treasury Warrants Nos. 18895, 18906 issued August 27th and No. 19333 issued September 16th, as well as by virtue of part of a Treasury Warrant; No. 21472 issued December 23rd, all in the year 1783; there is granted by said Commonwealth unto James Garrard a certain tract or parcel of land, containing 23,250 acres, by survey, bearing date the 15th day of Sep., 1788, lying and being in the County of Bourbon, on the west side of Big Sandy and bounded as followeth, to-wit:

"Beginning at a poplar, the north corner of William Robinson and Company's survey of 15,246 acres; thence south 45, west 220

poles to said Robinson and company west corner at two sugar trees; thence north 45, west 1480 poles to a poplar, ash and sugar tree; thence north 45, east 2,020 poles to three buckeyes, six sugar trees and two walnut trees standing on the bank of Sandy immediately below the mouth of Bear Creek; thence up Sandy and binding
142 thereon 1,250 poles on a reduced line to a buckeye and sugar tree; thence leaving Sandy and running south 3, west 530 poles to the beginning." With its appurtenances: to have and to hold the said tract or parcel of land, with its appurtenances, to the said James Garrard and his heirs forever.

In witness whereof, the said Beverly Randolph, Esq., Governor of the Commonwealth of Virginia, hath hereunto set his hand, and caused the lesser Seal of the said Commonwealth to be affixed at Richmond on the 19th day of October, in the year of our Lord, 1789, and of the Commonwealth the 14th.

BEVERLY RANDOLPH.

A copy. Attest:
[SEAL.] S. W. HAGER, *Auditor.*

143 EXHIBIT No. 17.

Henry Lee, Esq., Governor of the Commonwealth of Virginia, To all to whom these presents shall come, Greeting:

Know ye, That by virtue and in consideration of Land Office Treasury Warrants Nos. 15,641; 17,796; 15,261; 15,242; 18,057; 21,143; 15,262; there is granted by said Commonwealth unto Michael O'Meally, ass'ee of William Whetcroft, ass'ee of Samuel McGraw, attorney for John Smith, a certain Tract or Parcel of Land, containing 30,000 acres by survey, bearing date the 19th day of March 1788, lying and being in the County of Bourbon (Formerly Fayette in the District of Kentucky), on the Louvisa river, a fork of Sandy waters of the Ohio, and bounded as followeth, to-wit:

"Beginning at the upper corner of John Walker and Co.'s survey of 7,537 acres at two poplars and an ash on the west bank of said river, and running down meanders of said river and binding on the same 1779 poles to a poplar and ash, the upper corner of Merry Walker's survey of 4,060 acres; thence north 45, east 3,488 poles crossing the river and a large branch to an ash and sugar tree; thence south 45, east 1,460 poles to two white oaks; thence south 45, west 3,287 poles crossing a large creek and the river to the beginning."
144 With its appurtenances: To have and to hold the said tract or parcel of land, with its appurtenances, to the said Michael O'Meally, and his heirs forever.

In witness whereof, the said Henry Lee, Esq., Governor of the Commonwealth of Virginia, hath hereunto set his hand, and caused the lesser Seal of the said Commonwealth to be affixed at Richmond on the 20th day of February in the year of our Lord one thousand seven hundred and ninety-two and of the Commonwealth the Sixteenth.

HENRY LEE.

A copy, Attest:
S. W. HAGER, *Auditor.*

145 EXHIBIT No. 18.

Henry Lee, Esq., Governor of the Commonwealth of Virginia, To all to whom these presents shall come, Greeting:

Know ye, That by virtue and in consideration of land office treasury warrants Nos. 12,444; 17,073; 17072; 17036; 17024; 17044; 17032; 17030; 17031; 17025; 16916; 16917; 16838; 18410; 21906; 21573; 18396; 343; 344; 18,945; 17061; 17,059; there is granted by the said Commonwealth unto Michael O'Nealy ass'ee of William Whetcroft ass'ee of Samuel McGraw, attorney for John Smith, a certain tract or parcel of land containing Thirty thousand acres by Survey bearing date the 19th day of March one thousand seven hundred and 88, lying and being in the county of Bourbon and district of Kentucky on the Louvisa fork of Sandy river the waters of the Ohio and bounded as followeth, to-wit:

"Beginning at the lower end of the said Smith's 30,000 acre survey No. 1 at a poplar and ash, corner to said survey and a survey made in the name of Merry Walker of 4060 acres and on the west bank of said river in the bottom and runneth down the meanders of Sandy on the west side and binding on the same two thousand nine hundred and fifty poles to a walnut, sugar tree hickory and Lynn on the lower corner of said Walker survey of 5940 acres and
146 runneth thence N. 45, E. 1920 poles crossing said river to two sugar trees, thence S. 45, E. 2380 poles to a white oak, the*re* S. 45 W. 2116 poles crossing a large creek and the river to the beginning."

With its appurtenances: to have and to hold the said tract or parcel of land, with its appurtenances to the said Michael O'Meally and his heirs forever.

In witness whereof, the said Henry Lee, Esq., Governor of the Commonwealth of Virginia, hath hereunto set his hand, and caused the lesser Seal of the said Commonwealth to be affixed at Richmond on the 20th day of February, in the year of our Lord, 1792, and the Commonwealth the 16th.

HENRY LEE.

A copy, Attest:
[SEAL.] S. W. HAGER, *Auditor.*

147 EXHIBIT No. 19.

Henry Lee, Esq., Governor of the Commonwealth of Virginia, To all to whom these presents shall come, Greeting:

Know ye, That by virtue and in consideration of Land Office Treasury Warrant No. 18536 issued the 7th day of August, 1783, there is granted by the Commonwealth unto Michael O'Meally, ass'ee of William Whetcroft, ass'ee of Samuel McGraw, attorney for John Smith a certain Tract or Parcel of Land, containing 5,000 acres, by survey, bearing date the 20th day of March, 1788, lying and being in the County of Bourbon and District of Kentucky in the forks

of Main Sandy river and the Louvisa on John's creek, a branch of Louvisa river and bounded as followeth, to-wit:

"Beginning at two beech trees, and maple, corner to said Smith's survey No. 7; thence south 60, west 800 poles to two beech trees and maple; thence north 30, west 1000 poles to a beech and black oak; corner to said Smith's survey No. 1; and with the line of the same, north 60, east 800 poles to a walnut and black oak, corner to said Smith's No. 1 and 7, and with a line of the seventh, south 30,
148 east 1,000 poles to the beginning." With its appurtenances:

To have and to hold the said tract or parcel of land with its appurtenances to the said Michael O'Meally and his heirs forever.

In witness whereof, the said Henry Lee, Esq., Governor of the Commonwealth of Virginia, hath hereunto set his hand, and caused the lesser Seal of the said Commonwealth to be affixed at Richmond on the 20th day of February, in the year of our Lord, 1792, and of the Commonwealth the 16th.

HENRY LEE.

A copy, Attest:

[SEAL.] S. W. HAGER, *Auditor.*

149 EXHIBIT No. 20.

James Wood, Esq., Governor of the Commonwealth of Virginia, To all to whom these presents shall come, Greeting:

Know ye, That by virtue of two Land Office Treasury Warrants Nos. 1590 and 1591 issued the 15th day of September, 1795, there is granted by the said Commonwealth unto John Henry and Alexander Smyth a certain tract or parcel of land containing 150,000 acres, by survey, bearing date the 17th day of December, 1795, lying and being in the County of Russell, and is bounded as followeth, to-wit:

"Beginning on the east bank of Great Sandy river at the junction of Russell and Louvisa branches which form it at a sycamore tree marked as a corner and running thence up the Louvisa or northeasterly branch on the east side binding thereon according to its several courses and meanders, 2,100 poles to a buckeye, a sugar tree, and large poplar tree, standing on the bank at the lower end of a bottom some distance below the mouth of the first branch that empties below Grapevine on the same side, which tree was marked as a corner by Henry Smith in February, 1795, and running thence south 63, east 4210 poles to pointers; thence north 2,960 poles
150 to a stake to a line of Wm. Merritt's survey of 100,000 acres with the lines thereof; north 63, west 2,000 poles to a white oak and north 45, east 3,050 poles to an ash, a buckeye, a poplar and cluster of sycamore trees standing on the bank of that branch of Sandy which separates Russell from Wythe and Kenhawa counties about a computed mile above the mouth of a Creek which empties on the south side called Blackberry, which were marked by Henry Smith at the time aforesaid, and since by French Mason as the lower corner to Merritt's said survey and one of the sycamores with the Letters F. M" thence down the last mentioned branch of Sandy,

binding thereon the South side according to its several courses and meanders to 8,076, poles to an elm birch marked as a corner standing on the south bank of the said branch 49 poles below the mouth of a creek that empties thereinto on the south side, called Comforts creek, which trees are also a corner to survey made for Alexander Walcott; thence with a line of the last mentioned survey; south 13, degrees West 7480 poles to the beginning. But it is always to be understood that the survey upon which this grant is founded includes 23,200 acres exclusive of the above quantity of 150,000 acres all of which having a preference by law to the warrants and rights upon which this grant is founded, liberty is reserved that
151 the same shall be firm and valid and may be carried into grant or grants and this grant shall be no bar in either law or equity to the confirmation of the title or titles to the same as beforementioned and reserved, with its appurtenances. To have and to hold the said tract or parcel of land with its appurtenances to the said John Henry and Alexander Smith (except-before excepted) and his heirs forever in Witness Whereof the said James Wood Esquire, Governor of the Commonwealth of Virginia, hath hereunto set his hand and caused the lesser Seal of the said Commonwealth to be affixed at Richmond on the 20th day of August in the year of our Lord one thousand 796, and of the Commonwealth the 21st.

JAMES WOOD.

LAND OFFICE, RICHMOND, VA.

I hereby certify that the foregoing is a true copy from the records of this office. Witness my hand and Seal of Office this 16th day of May, 1907.

[SEAL.] JNO. W. RICHARDSON,
Register of the Land Office.

152 (EXHIBIT No. 21.)

James Wood, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That by virtue of two land office treasury warrants Nos. 1311, and 1642, there is granted by the said Commonwealth unto Benjamin Haskell, Physician, assignee of Austin Nicholls attorney in fact for David Bothe and Philo Norton, attorneys for John Beach, assignee of Austin Nicholls by David Bothe his attorney in fact a certain tract or parcel of land containing 300,000 acres by survey bearing date the 28th day of November, 1795, lying and being in the county of Russell adjoining Jesse Evans survey of 180,000 acres and is bounded as followeth, to-wit:

"Beginning at a chestnut oak the second corner of Jesse Evans survey which stands 3942 poles north of the head of Stock creek at which a lynn and three poplars marked as a corner stands and with lines of the aforesaid survey N. 57' E. 3216 poles to a maple and two chestnuts marked (J. G.) N. 11 E. 7160 poles to a white oak and

Spanish oak marked "J. G." N. 67′ E. 2634 poles passing a corner of said Evan's survey at 1400 poles to three poplars and a sugar tree corner to Richard Smith's survey of 200,000 acres N. 52′ W. 8220 poles to a red oak and two beeches marked (J. G.) and thence
153 S. 14,780 poles to the beginning," with its appurtenances.

To have and to hold the said tract or parcel of land with its appurtenances to the said Benjamin Haskell and his heirs forever. In witness whereof the said James Wood, Esquire, Governor of the Commonwealth of Virginia, hath hereunto set his hand and caused the lesser Seal of the said Commonwealth to be affixed at Richmond on the 16th day of February in the year of our Lord one thousand 797 and the Commonwealth the 21st.

JAMES WOOD.

LAND OFFICE, RICHMOND, VA.

I hereby certify that the foregoing is a true copy from the records of this office. Witness my hand and Seal of Office this 16th day of May, 1907.

JNO. RICHARDSON,
Register of the Land Office.

154 (EXHIBIT No. 22.)

Isaac Shelby, Esq., Governor of the Commonwealth of Kentucky, to all to whom these presents come, Greeting:

Know ye, That by virtue and in consideration of a land office treasury warrant No. 19182, there is granted by the said Commonwealth unto George Lewis ass'ee of Porter Grant a certain tract or parcel of land containing Eight thousand acres by survey bearing date the 25th day of April, seventeen hundred and eighty nine lying and being in the county of Bourbon on the waters of Big Sandy and bounded as followeth: "Beginning at a White oak corner to Michael Ryan's survey of 10,000 acres in Merry Walker's line thence North 45′ West 1600 poles with Ryan's line to his corner two chestnut trees, thence South 45′ West 800 poles to a sugar tree corner to said grants 12058¾ acres survey thence with the line of said survey South 45′ East 1600 poles to the beginning corner of said grants 1258 #/$, acre survey at two white oaks in Merry Walker's line, thence with his line North 45′ East 800 poles to the beginning. With its appurtenances to have and to hold the said tract or parcel of land with its appurtenances to the said George Lewis, and his heirs forever. In witness whereof the said Isaac Shelby, Esq., Governor of the Commonwealth of Kentucky
155 hath hereunto set his hand and caused the Seal of the said Commonwealth to be affixed at Frankfort, on the 16th day of October in the year of our Lord Seventeen hundred and ninety five and of the Commonwealth the 4th.

ISAAC SHELBY.

By the Governor:
[SEAL.]

JAMES BROWN,
Secretary of State.

A copy. Attest:
S. W. HAGER, *Auditor.*

156 July Rules, 1 Day of July, 1907, Pike Circuit Court.

COMMONWEALTH OF KENTUCKY, Plaintiff,

vs.

EASTERN KENTUCKY COAL LANDS CORPORATION et al., Defendants.

Entry of Appearance.

This day came the defendant, Charles B. Hillhouse and entered his appearance herein.

THOMAS H. HARMAN,
JAMES H. HAZELRIGG,
WM. J. HENDRICK,
For Defendant Hillhouse.

Pike Circuit Court, July Rules, 1st Day of July, 1907.

Equity.

COMMONWEALTH OF KENTUCKY

vs.

EASTERN KY. COAL LANDS CORPORATION, ETC.

Written motion filed to strike.

157 Pike Circuit Court.

THE COMMONWEALTH OF KENTUCKY, Plaintiff,

vs.

EASTERN KENTUCKY COAL LANDS CORPORATION et al., Defendants.

Motion to Strike.

Now comes the defendant, Eastern Kentucky Coal Lands Corporation, and moves the Court to strike from plaintiff's petition the following matter:

First. On page eighteen of said petition, beginning with the words "And plaintiff states that" in twentieth line on said page down to and including the thirty-fourth line, ending with the words "or any of them."

Second. On page eighteen, of petition, beginning with the words "And thereupon" in thirty-ninth line on said page down, including remainder of said page together with the first eighteen lines on page nineteen, comprising three paragraphs.

Third. On page nineteen, beginning with the words "And the plaintiff" in thirty-second line on said page, down to and including fifty-eighth line on said page, it being one entire paragraph,
158 and ending with the words "All interest therein."

THOMAS H. HARMAN,
JAMES H. HAZELRIGG,
WM. J. HENDRICK,
For Defendant.

Filed July 1st, 1907.
J. B. POLLEY, *Clerk*.
By A. D. CLINE, *D. C.*
9—224

Pike Circuit Court, July Rules, 1st Day of July, 1907.

Equity.

COMMONWEALTH OF KENTUCKY
vs.
EASTERN KY. COAL LANDS CORPORATION, ETC.

Written motion to strike filed by Chas. B. Hillhouse.

159 Pike Circuit Court.

THE COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
EASTERN KY. COAL LANDS CORPORATION et al., Defendants.

Motion to Strike.

Now comes the defendant, Charles B. Hillhouse, and moves the Court to strike from plaintiff's petition the following matter:

First. On page eighteen of said petition, beginning with the words "And plaintiff states that" in twentieth line on said page down to and including the fifty-fourth line, ending with the words "or any of them."

Second. On page eighteen of petition, beginning with the words "And thereupon" in thirty-ninth line on said page down, including remainder of said page together with the first eighteen lines on page nineteen, comprising three paragraphs.

Third. On page nineteen, beginning with the words "And the plaintiff" in thirty-second line on said page, down to and including fifty-eighth line on said page, it being one entire paragraph, and ending with the words "All interest therein."

THOMAS HARMAN,
160 JAMES H. HAZELRIGG,
WM. J. HENDRICK,
For Defendant.

Filed July 1, 1907.

J. B. POLLEY, *Clerk.*
By A. D. CLINE, *D. C.*

July Rules, 1st Day of July, 1907.

Equity.

COMMONWEALTH OF KY.
vs.
EASTERN KY. COAL LANDS CORPORATION, ETC.

Demurrer to petition filed by Charles B. Hillhouse.

Pike Circuit Court.

COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
EASTERN KY. COAL LANDS CORPORATION et al., Defendants.

Demurrer.

161 Now comes the defendant, Charles B. Hillhouse, and demurs to the petition of the plaintiff filed herein, because he says that said petition does not state facts sufficient to constitute a cause of action against this defendant and because it does not state facts sufficient to support a cause of action against this defendant.

Wherefore, the defendant prays judgment accordingly.

THOMAS H. HARMAN,
JAMES H. HAZELRIGG,
WM. J. HENDRICK,
For Defendant Hillhouse.

Filed July 1, 1907.
J. B. POLLEY, *Clerk,*
By A. D. CLINE, *D. C.*

Pike Circuit Court, July Rules, 1st Day of July, 1907.

COMMONWEALTH OF KY.
vs.
EASTERN KY. COAL LANDS CORPORATION, ETC.

Demurrer to petition filed by Eastern Kentucky Coal Lands
162 Corporation.

Pike Circuit Court.

THE COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
EASTERN KY. COAL LANDS CORPORATION et al., Defendants.

Demurrer.

Now comes the defendant, Eastern Ky. Coal Lands Corporation, and demurs to the petition of the plaintiff filed herein, because it

says that said petition does not state sufficient facts to constitute a ca-se of action against this defendant, and because it does not state facts sufficient to support a cause of action against this defendant.

Wherefore the defendant prays judgment accordingly.

THOMAS H. HARMAN,
JAMES H. HAZELRIGG,
WM. J. HENDRICK,
For Defendant.

Filed July 1, 1907.

J. B. POLLEY, *Clerk*,
By A. D. CLINE, *D. C.*

163 July Rules, 1st Day of July, 1907.

Equity.

COMMONWEALTH OF KENTUCKY
vs.
EASTERN KY. COAL LANDS CORPORATION, ETC.

Special demurrer to petition filed by Eastern Kentucky Coal Lands Corporation.

Pike Circuit Court.

COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
EASTERN KENTUCKY COAL LANDS CORPORATION et al., Defendants.

Special Demurrer.

Now comes the defendant, Eastern Kentucky Coal Lands Corporation, and demurs specially to the plaintiff's petition herein, because it says there is a defect of parties defendants in this: That the plaintiff has not made parties defendant herein, the heirs at law, or devisees of the original patentees of the lands described in its
164 petition.

Wherefore defendant prays judgment accordingly.

THOMAS H. HARMAN,
JAMES H. HAZELRIGG,
WM. J. HENDRICK,
For Defendant.

July Rules, 1st Day of July, 1907.

Equity.

COMMONWEALTH OF KENTUCKY
vs.
EASTERN KY. COAL LANDS CORPORATION, ETC.

Special demurrer to petition filed by Charles B. Hillhouse.

Pike Circuit Court.

THE COMMONWEALTH OF KY., Plaintiff,
vs.
EASTERN KY. COAL LANDS CORPORATION et al., Defendants.

Special Demurrer.

165 Now comes the defendant, Charles B. Hillhouse, and demurs specially to the plaintiff's petition herein because he says there is a defect of parties defendants in this:

That the plaintiff has not made parties defendants herein, the heirs at law, or devisees of the original patentees of the lands described in the petition.

Wherefore defendant prays judgment accordingly.

THOMAS H. HARMAN.
JAMES H. HAZELRIGG.
WM. J. HENDRICK.

Filed July 1, 1907.

J. B. POLLEY, *Clerk*,
By A. D. CLINE, *D. C.*

Pike Circuit Court, July Rules, 1st Day of July, 1907.

COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
EASTERN KY. COAL LANDS CORPORATION et al., Defendants.

Entry of Appearance.

This day *came* the defendant, Eastern Kentucky Coal Lands Corporation, and enters its appearance herein.

THOMAS J. HARMAN,
JAMES H. HAZELRIGG,
WM. J. HENDRICK,
For Defendant.

Pike Circuit Court, August Rules, 5th Day of August, 1907.

Equity.

COMMONWEALTH OF KENTUCKY
vs.
EASTERN KY. COAL LANDS CORPORATION, ETC.

Demurrer of Cortland Van Camp, W. N. Pickerill, and G. G. Hugh-s to petition of plaintiff filed.

166 STATE OF KENTUCKY,
County of Pike:

In the Circuit Court.

COMMONWEALTH OF KENTUCKY
vs.
EASTERN KY. COAL LANDS CORPORATION et al.

Come now Cortland Van Camp, W. N. Pickerill, and G. G. Hughes, defendants in the above entitled cause, and demurr*er* to the petition of the plaintiff *t*herein, and for cause of demurrer state that said petition does not state sufficient facts to constitute a cause of action against them.

W. N. PICKERILL,
Indianapolis, Indiana.
G. G. HUGHES,
Burlington, Kentucky,
Att'ys for Themselves and for Cortland Van Camp, of Indianapolis, Indiana.

Filed August 5th, 1907.
J. B. POLEY, *Clerk,*
By A. D. CLINE, *D. C.*

167 Pike Circuit Court, August Rules, 5th Day of August, 1907.

COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
EASTERN KY. COAL LANDS CORPORATION, ETC., Defendants.

Motion.

Comes the defendant, J. C. Twyman, and moves the Court to require plaintiff to paragraph its petition herein.

C. C. McCHORD,
HINES, CHANDLER & NORMAN,
Attys. for Deft. Twyman.

Filed Aug. 5, 1907.
J. B. POLLEY, *Clk.*

August Rules, 5th Day of Aug., 1907.

COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
EASTERN KENTUCKY COAL LANDS CORPORATION & ETC., Defendants.

Written motion to elect filed by J. C. Twyman.

168 Pike Circuit Court.

COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
EASTERN KENTUCKY COAL LANDS CORPORATION & ETC., Defendants.

Motion to Elect by Twyman.

The defendant, J. C. Twyman, states that plaintiff's petition herein sets up a separate and distinct ca-se of action as to each of the twenty-two tracts of land described therein.

Wherefore, said defendant move- the court to require plaintiff to elect which one of said causes of action it will prosecute.

C. C. McCHORD &
HINES, CHANDLER & NORMAN,
Attorneys for the Defendant J. C. Twyman.

Filed Aug. 5th, 1907.
J. B. POLLEY, *Clk.*,
By A. D. CLINE, *D. C.*

169 Pike Circuit Court, Oct. Term, 7th Day of Oct., 1907.

COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
EASTERN KENTUCKY COAL LANDS CORPORATION & ETC., Defendants.

Order Filing Demurrers of Geo. H. Taylor.

This cause came on this — day of Oct. 1907, upon the petition of the plaintiff, and proceedings thereon — in the clerk's office, and thereupon came the defendant Geo. H. Taylor, and filed his Special demurrer herein and without waiving said Special demurrer, filed his General demurrer and without waiving said General demurrer *and* file- his motion to strike certain portions of said petition from the records.

Pike Circuit Court.

COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
EASTERN KENTUCKY COAL LANDS CORPORATION & ETC., Defendants.

Demurrer of Geo. H. Taylor.

Now comes the defendant, Geo. H. Taylor, and without waiving the benefit of the Special Demurrer herein demurs to
170 the petition of the plaintiff because he says that said petition does not state facts sufficient to constitute a cause of action against this defendant, and because it does not state facts sufficient to support a cause of action against this defendant.

Wherefore the defendant prays judgment accordingly.

A. D. PRESTON,
For Deft.

Filed Oct. 7th, 1907.
J. B. POLLEY, *Clk.*

Pike Circuit Court.

COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
EASTERN KY. COAL LANDS CORPORATION & ETC., Defendants.

Special Demurrer of Taylor.

Now comes the defendant, Geo. H. Taylor, and demurs specially to the plaintiff's petition herein because he says that the court has no jurisdiction of this action; and that there is a defect of parties defendants in this; that the plaintiffs have not made parties
171 defendant herein all of the present owners and claimers of the said tracts of Three — Thousand (300,000) acres of land granted by the Commonwealth of Virginia to Benjamin Haskell and referred to in the 21st paragraph or section of said petition; and that the plaintiff has brought the action against a portion of said above described tract of Three hundred Thousand (300,000) acres of land and against a portion only of that part of said tract which is situated in Pike County.

Wherefore, the defendant prays judgment accordingly.

A. D. PRESTON,
For Defendant.

Filed Oct. 7th, 1907.
J. B. POLLEY, *Clk.*

Pike Circuit Court.

COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
EASTERN KY. COAL LANDS CORPORATION & ETC., Defendants.

Motion to Strike by Taylor.

Now comes the defendant Geo. H. Taylor, and moves the court to strike from plaintiff's petition the following matter:

172 1st. On page 5, of said petition beginning with the words "all that part which is situated in Pike county" in the 5th line of said page down to and including the 17th line ending with the words "book 38 P. 1."

Second. On page 11, of said petition beginning with the words "all of that part which is situated in Pike county" in the 28th line of said page down to and including the 42nd line of said page ending with the words "book 38 Page 1."

Third. On page 18 of petition — with the words "and thereupon" in 39th line on said page down — including remainder of said page together with the first 18 lines on page 19, comprising three paragraphs.

A. D. PRESTON,
For Deft.

Filed Oct. 7th, 1907.
J. B. POLLEY, *Clk.*

Pike Circuit Court.

COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
EASTERN KY. COAL LANDS CORPORATION & ETC., Defendants.

Answer to J. C. Twyman.

173 The defendant, J. C. Twyman, for answer to plaintiff's petition herein states that he is one of the owners of the tract of land described in plaintiff's petition as follows:

A certain tract or parcel of land containing 7537 acres by survey bearing date the 17th day of April, 1787, granted by the Commonwealth of Virginia to John Walker, Robert Johnson and Ruben Twyman, by letters patent bearing date the 16th day of December, 1789, at the time of said survey in the county of Bourbon and state of Virginia and in said patent, stated to be in said county which said patent is recorded in the land office of Kentucky in Book 12, of (Va.) grants, Page 354.

This defendant further states that the Ruben Twyman named as one of the Grantees in said patent was the owner of an undivided one-third interest in said tract of land at the time of his death which occurred many years ago, and that the said Reuben Twyman

at the time of his death left surviving him six children to whom by will duly probated, he devised his entire estate to be equally divided among them. This defendant further states that George Twyman, the father of this defendant, was one of said six children, and that the said George Twyman died intestate many years ago, leaving this defendant and two other children as his only heirs.

This defendant states that with the exception of three or four of the descendants of the said Reuben Twyman, who owned an
174 undivided interest of not more than one twenty-fifth of the estate of said Reuben Twyman, neither the said Reuben Twyman nor any of his devisees, or any person claiming under, or through any of them ever parted with his interest in said land or attempted to convey the same to any person whomsoever, and that with the exception named the devisees of the said Reuben Twyman and their heirs and devisees are the owners of and entitled to an undivided interest of one-third ($\frac{1}{3}$) in said tract of land of 7,537 acres granted by the Commonwealth of Virginia by patent of date December 16th, 1789, to John Walker, Robert Johnson, and Reuben Twyman and that the heirs of the said George Twyman are entitled to one-sixth 1/6 of said undivided one-third ($\frac{1}{3}$) interest.

This defendant denies that none of the original grantees in said patent, and that no person claiming by, through or under them has ever caused the said land to be listed for assessment or taxation or paid any taxes upon same, or any part thereof, and this defendant further denies that the said Reuben Twyman, or either of his co-grantees or any person claiming through or under them or any one of them ever abandoned claim of title to or ownership of any part of said land. This defendant further denies that no claim of
175 title or ownership of said land was ever asserted by the original patentees or any person claiming under them, and denies that he or any of the other heirs, devisees or descendants of the said Reuben Twyman are delinquent as to the assessment of said lands for taxation or as to the payment of taxes which should have been assessed as of the 15th day of September, 1901, the 15th day of September, 1902, the 15th day of September, 1903, the 15th day of September, 1904, or the 15th day of September, 1905, or that the claim or title of this defendant or any of the heirs, devisees or descendants by reason of any failure to cause said lands to be assessed for taxation or to pay taxes thereon.

This defendant further states that on the — day of Dec., 1906, he appeared in the Pike County Court which was then in session and tendered in open Court on behalf of himself and the other descendants of Reuben Twyman, for whom he was authorized to act in the matter, a petition verified by himself, describing said lands so as to identify them, and stating the years for which the taxes were not paid, and the grant under which he and the other descendants claim title to said lands, and the manner in which the title devolved upon him and them, and offered to list for taxation the land described therein; said petition is in words and figures as follows: "Your
176 petitioner, J. C. Twyman, stated that he is a grandson of Reuben Twyman, deceased, and that he, together with the other heirs and descendants of said Reuben Twyman, de-

ceased, are the owners and entitled to the possession of an undivided interest in a certain tract or parcel of land containing seven thousand, five hundred and thirty-seven acres, and lying and being in the County of Pike, State of Kentucky, and being and lying on the Big Sandy river, in what was formerly known as *the* Bourbon County, Virginia, but that part of said County which contains the land, hereinafter described, is now Pike County, Kentucky, and said land was originally described in a grant dated the 16th day of December, 1789, and recorded in the Land Office at Frankfort, Kentucky, in Book 12, page 354; said land is described as follows:

Being on the south side of the Big Sandy river, and bounded as follows, to-wit:

"Beginning at two poplars and a hickory on the Bank of Sandy river; thence down Sandy north 20 west one hundred and sixty (160) poles, west twenty (20) poles, south fifty (50) poles, west thirty (30) poles north 60, west forty (40) poles, north 32, west one hundred and sixty (160) poles; thence north 85, west one hundred and sixty (160) poles to the mouth of the branch, north 18, east sixty (60) poles; north 55, west 80 poles; south 35, west 520
177 poles to two ashes, a sugar tree and lynn, leaving Sandy river and running south 45, west 1101¾ poles to two white oaks; thence south 45, east 1131 poles to a chestnut; north 45 east 1101¾ poles to the beginning." The grant conveying the said land to Reuben Twyman reads as follows:

Beverly Randolph, Esq., Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That by virtue and in consideration of seven land office Treasury warrants numbers 7278, 7277, 7267, issued the 14th day of October, 1781, number 13015 issued the 26th day of July and number 14172, 14170 and 14171 issued the 11th day of September, 1782. There is granted by said Commonwealth unto John Walker, Robert Johnson, and Reuben Twyman a certain tract or parcel of land, containing seven thousand five hundred and thirty-seven acres, by survey, bearing date the 17th day of April, one thousand seven hundred and eighty-seven (1787), lying and being in the county of Bourbon, on the south side of Big Sandy river and bounded as followeth, to-wit:

"Beginning at two poplars and hickory on the bank of Sandy where the county line strikes Sandy river; thence down
178 Sandy, north 20, west 160 poles; west 20 poles, south 50 poles; west 30 poles, north 60, west 40 poles; north 32, west 160 poles; north 85 west 160 poles to the mouth of an branch, north 18, east 60 poles, north 55, west 80 poles; south 35, west 520 poles to two ashes, a sugar tree and lynn, leaving Sandy river and running south 45, west 1101¾ poles to two white oaks; thence south 45 east 1131 poles to a chestnut; north 45, east 1101¾ poles to the beginning."

With its appurtenances; to have and to hold the said tract or parcel of land, with its appurtenances to the said John Walker, Robert Johnson, and Reuben Twyman and their heirs forever.

In witness whereof, the said Beverly Randolph, Esq., Governor of the Commonwealth of Virginia, hath hereunto set his hand, and caused the lesser Seal of the said Commonwealth to be fixed at Richmond on the 16th day of December, in the year of our Lord, one thousand seven hundred and eighty-nine (1789) and of the Commonwealth the fourteenth.

BEVERLY RANDOLPH.

A copy. Attest:
CHAS. E. BOOE, *Aut, Auditor.*

179 And a copy thereof is filed herewith and made part hereof and marked with the letter "X" for identification, and being the same land described by J. C. Twyman and his co-heirs as claimants and descendants of said Reuben Twyman, deceased, and your petitioner says that said land has not been listed, by the owners thereof, or the taxes paid thereon for the years, 1902, 1903, 1904, 1905, and 1906, and your petitioner now says that he and his co-heirs were the owners of said land on the 15th day of September, 1901, on the 15th day of September, 1902, on the 15th day of September, 1903, on the 1st day of September, 1904, and on the 1st day of September, 1905, and he now asks this Honorable Court to list the same for taxation, as of those dates, and that he be adjudged entitled to list said property for himself, and his co-heirs as of said dates.

Wherefore he prays the Honorable Court that said property be properly assessed in his name, for the use and benefit of the heirs and descendants of Reuben Twyman, deceased, and he prays for all proper relief to which he may appear entitled.

J. C. TWYMAN.

This defendant further states that his said application to list said lands for taxation was set for hearing on the 15th day of January, 1907, and that a written notice of said hearing was served
180 by the Sheriff of Pike County on C. C. Bowles, County Attorney of Pike County, on the 5th day of January, 1907, which notice was in words and figures as follows:

"In re J. C. TWYMAN, on Petition.

C. C. Bowles, County Attorney of Pike County, Kentucky, will take notice that I have filed in the Pike Circuit Court a Petition for the purpose of having listed certain property lying and being in Pike County, Kentucky, and being the same property conveyed to John Walker, Robert Johnson, and Reuben Twyman by Beverly Randolph, Governor of Virginia, on the 16th day of December, 1789, and being inherited by me and by co-heirs as the descendants of Reuben Twyman, deceased; said land *land* being fully described and set forth in the petition filed by me in the County Court of Pike County, Kentucky, and the same grant being properly recorded at Frankfort, Kentucky, in the Land Office in Book 12, page 354, and you will take notice that Tuesday, January the 15th, 1907, at

the hour of ten o'clock, at the court house, at Pikeville, the County seat of Pike County, said matter will come up for a hearing.

J. C. TWYMAN.

This defendant further states that both he and said County Attorney were present in the Pike County court on the
181 said 15th day of January, 1907, and that this defendant then offered to list said lands for taxation, whereupon the Judge of the Pike County Court refused to consider his said application to list said lands for assessment and taxation and dismissed his said petition by an order entered of record which is in words and figures as follows, to-wit:

"In the Matter of J. C. TWYMAN, to List for Assessment.

Taxation for the years 1901, 1902, 1903, 1904, and 1905.

Order.

Came J. C. Twyman, the above named petitioner, and applicant representing himself in the above styled cause, and C. C. Bowles, County Attorney, representing Pike County, and State of Kentucky, and after due notice had been executed on C. C. Bowles in writing, and hearing upon said application having been fixed by the applicant for Jan. 15, 1907, and upon motion of C. C. Bowles, County Attorney, and the Court being sufficiently advised.

Orders that the petition be dismissed."

This defendant further states that while he believes when he offered to list said lands for taxation and to file said petition and still believes that Article III of the Revenue Act of March 15th,
182 1906, providing for the assessment of lands by the Judge of the County Court for certain years, and for the forfeiture of all claims to land for failure to have them so assessed, was and is unconstitutional and void; he was ready and willing, and has at all times since said application was made been ready and willing to pay the taxes upon a legal assessment of said lands by the said Judge of the Pike County Court.

For further answer herein, this defendant states that the provisions of the Revenue Act of March 15th, 1906, requiring each claimant of land to list for taxation for certain years and providing for the forfeiture of each claimant's right to or interest in land for his failure to so list it for taxation, which provisions are set out in the plaintiff's petition herein, and are void, and in violation of the 14th Amendment to the Constitution of the United States in that they deprive the defendants herein, of their property without due process of law and deny them the equal protection of the laws, and that said provisions are also in violation of the Compact with Virginia, and this defendant relies upon the provisions of the 14th Amendment to the Constitution of the United States, and also upon the said Compact with Virginia as a defense herein.

Wherefore, this defendant prays that the petition of plain-
183 tiff be dismissed, and for all general, proper and equitable relief.

C. C. McCHORD,
HINES, CHANDLER & NORMAN,
For Defendant, J. C. Twyman.

Filed October 9, 1907.
J. B. POLLEY, *Clerk.*

Pike Circuit Court, October Term, 10th Day of October, 1907.

Equity.

COMMONWEALTH OF KENTUCKY
vs.
EASTERN KY. COAL LANDS CORPORATION, ETC.

Set for the 8th day of present term.

October Term, 14th Day of October, 1907.

Equity.

COMMONWEALTH OF KENTUCKY
vs.
EASTERN KENTUCKY COAL LANDS CORPORATION, ETC.

184 Report of attorney for non-resident and unknown resident-filed.

Pike Circuit Court.

COMMONWEALTH OF KENTUCKY, Plaintiff,
versus
EASTERN KENTUCKY COAL LANDS CORPORATION & OTHERS,
Defendants.

Report of A. E. Auxier, Attorney for the Non-resident & Unknown Defendants.

Now comes A. E. Auxier, attorney appointed by the Clerk of the Pike Circuit Court for the Non-resident and Unknown defendants in the above entitled action, and respectfully reports to this Honorable Court as follows:

That he made diligent efforts to inform the defendants by mail concerning the pendency of this action.

That he addressed and sent by registered mail, deposited in the Post office at Pikeville, Kentucky, postage prepaid, a letter to each of the defendants whose name and address is given and set forth in the petition, to the respective addresses given and set forth in said

petition, informing each and all of them of the nature and
185 pendency *and* this action.

He files herewith, and makes part hereof a copy of said letters, and marked same "Letter" for identify. The above mentioned letters were deposited in said Post office on the 5th day of June, 1907.

That as to the defendants whose names are given and set forth in said petition, but whose addresses are not given, and as to the defendants whose names and addresses are not given, and as to all other defendants he says:

That he was unable to inform them concerning the action or of the pendency and nature thereof except as follows:

That he was informed that one Albert K. McMurray was a defendant in said action, and he addressed and sent by mail deposited in the Post office at Pikeville, Kentucky, postage prepaid, to said Albert K. McMurray, at New York City, State of New York, which place he was informed was the name of the place nearest the residence of the said Albert K. McMurray wherein a post office is kept, informing him of the nature and pendency of this action; and the Exhibit filed herewith marked "Letter," is also a copy of the letter mailed to the said Albert K. McMurray; that this letter was sent September 5, 1907.

That he has not been employed by any of said defend-
186 ants; that he has not learned that any of said defendants are under any disability whatever, that he cannot make any affirmative defense for any of those defendants whom he could not inform concerning the pendency and nature of the said action, nor for any of the defendants.

He prays for a reasonable allowance for his services. All of which is respectfully reported.

A. E. AUXIER,
Attorney for the Non-resident and Unknown Defendants.

PIKEVILLE, PIKE COUNTY, KENTUCKY, *June* 5, 1907.

DEAR SIR: On the 3rd day of June, 1907, there was filed in the Pike County, Kentucky, Circuit Court Clerk's office by the Commonwealth of Kentucky, a petition in Equity against the Eastern Kentucky Coal Lands Corporation, yourself and others, as claimants, under the surveys and patents hereinafter stated, of the land therein described, seeking to have the title and claim of yourself,
and each and all other defendants, under said surveys and
187 patents, and each and all of them, to said tracts of land, adjudged forfeited to the Commonwealth of Kentucky under provisions of Article III of an act of the Legislature of the State of Kentucky entitled "An Act Relating to Revenue and Taxation," approved March 15, 1906, upon the ground and for the reasons as alleged in the petition, that the defendants, including yourself, and those by, through and under whom they and you claim, have failed to list said property for taxation or pay the taxes that ought to have been paid thereupon for three out of the five years for which assessments ought to have been made, under the provisions of said Act, as

of date September 15, 1901, September 15, 1902, September 15, 1903, September 1, 1904, and September 1, 1905.

The petition describes each tract by metes and bounds and with the same is filed a copy of the patents, the title and claim under which is sought to be forfeited, and alleges that you are a claimant thereof, or of an interest therein; and further, that you and the other defendants are, and each is in default as to the assessment of said property for taxation as required by said Act and hereinbefore stated, and in default in the payment of taxes thereupon for three out of five years.

The petition alleges that each and all of said tracts of land
188 lie wholly or partly within the County of Pike, and State of Kentucky, and have been so situated for more than 85 years past last, said Pike County having been formed by an Act of the Legislature of the State of Kentucky in the year 1822; and under the provisions of Article III of said Act, the Circuit Court of the County in which the land, or any part thereof, lies has jurisdiction to adjudge and decree forfeiture.

The tracts of land, the title to which is sought to be forfeited and transferred to the Commonwealth by said proceeding, and under which you are alleged to be a claimant and your title to which is therein sought to be forfeited and transferred to the Commonwealth, are described in the enclosure herewith, which is a copy of the caption of the petition in so far as it describes and refers to the patents and surveys upon which the title and claim of yourself and other defendants, as claimants thereunder, is sought to be forfeited and transferred to the Commonwealth.

All claims of title to said lands, or any part thereof, or any interest therein, upon the part of all the defendants, including yourself, under said patents, or any of them, is sought by the petition to be forfeited and transferred to the Commonwealth by reason of the alleged delinquency in failing to have the same listed for
189 taxation and the taxes thereupon paid, as hereinbefore stated.

The substance of the prayer of the petition is that all title or claim thereof, or other claim of each and all the defendants, including yourself, and the unknown defendant and unknown defendants, the unknown owner and unknown owners, unknown claimant and unknown claimants thereof, and of those under whom they claim under said patents, or any of them, in, of, to or concerning the said land, or part thereof, or interest therein, be declared forfeited, and that the title and all claim of all the defendants, including yourself, also including the unknown defendant and unknown defendants, unknown owner and unknown owners, unknown claimant and unknown claimants, under said patents, and those under whom they claim, and each and all of them, be vested in the Commonwealth without execution of deed or other instrument; and for such other and further proceedings and relief as the plaintiff is entitled to and as is provided and declared in the further provisions of Article III of the said Act, approved March 15, 1906, to the end and with the purpose and effect that such title and claim so forfeited to and vested in the plaintiff and not redeemed or purchased back by the defendants therein named, who shall establish

a title thereto in himself or themselves, upon which he or they could maintain an action in ejection, and who shall pay a
190 sum equal to the amount of the unpaid taxes charged, and that ought to have been charged against said defendant or defendants, and those under whom he or they claim, as the owner or claimant of said land, for fifty years, together with interest thereupon at the rate of 15% per annum from the time said unpaid taxes for said several years were due and the cost of proceedings, including a reasonable attorney fee to be fixed by the Court, as provided in said Act, shall be transferred to, and vested in each and every person for so much thereof as such person, or those under whom he claims, has had the actual adverse possession for five years next preceding the judgment of forfeiture prayed under claim, or color of title, derived from any source whatever, and who, or those under whom he claims, shall have paid taxes thereupon for the five years in which such possession may have been held, as provided in Section 6 of Article III of the said Act; and that the title so forfeited and vested in the plaintiff and remaining in it, if any, and not redeemed or purchased back in the manner aforesaid and after the operation and effect of the provisions of Section 6 of the said Act, transferring the title and claims so forfeited to and vested in plaintiff to each and every person for so much thereof as such person, or those under whom he claims has had the actual adverse possession for five years next preceding judgment of for-
191 feiture under claim, or color of title, derived from any source whatsoever, be sold in the manner provided in Article III aforesaid. And it prays for all general and special relief.

In accordance with the provisions of said Article, there is posted at the front door of the Court house in Pikeville, Kentucky, a copy of said petition and all exhibits.

Under Section 59 of the Civil Code of Practice of Kentucky, I was, on the 3 day of June, 1907, appointed by the Clerk of said Court as attorney for the non-resident defendants my duty being to make diligent effort to inform the defendants by mail concerning the pendency and nature of the action against them, and to report to the Court during the first term which does not commence within sixty days after my appointment, the result of my efforts.

Under other provisions of the Civil Code of Practice, the Clerk entered upon the petition, on the 3 day of June, 1907, warning order, warning you, and the other non-resident defendants to appear in said Court in thirty days after the date of the entry thereof, and at the first rule day occurring after the expiration of said thirty days, to answer the petition of the plaintiff. Under that order your answer is due to be filed at August Rules, 1907, being Monday, August 5th.

You are at liberty, of course, to be represented by such counsel as you may employ, if any.

192 The term of the Pike Circuit Court at which my report is due to be filed will begin on Monday, October 7, 1907.

Very truly yours,

A. E. AUXIER.

Filed October 14, 1907.
J. B. POLLEY, *Clerk*.
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Pike Circuit Court.

COMMONWEALTH, Plaintiff,
vs.
EASTERN KY. COAL LANDS CORPORATION, ETC., Defendants.

Motion by Defendant J. C. Twyman.

The defendant, J. C. Twyman, moves the Court to act first upon the motion to paragraph the petition and then upon the motion to elect, and tenders brief upon those motions.

If the motions be overruled this defendant asks that the demurrer lodged with the Clerk be filed at once. If the motions be sustained, the filing of the demurrer is to be postponed until the plaintiff has complied with the requirements to paragraph and elect. If the plaintiff should elect to proceed for a forfeiture of the
193 tract of land in which this defendant claims an interest, this defendant asks that the demurrer then be filed. If the demurrer be overruled, this defendant asks that his answer lodged with the Clerk be filed, and that the demurrer thereto, if any, be acted upon.

This defendant requests that exceptions be reserved to any adverse action of the Court, and that an appeal to the Court of Appeals be granted him from any final judgment of the Court in favor of plaintiff.

C. C. McCHORD,
HINES, CHANDLER AND NORMAN.
For Defendant J. C. Twyman.

Filed October 15, 1907.

J. B. POLLEY, *Clerk.*
By A. D. CLINE, *D. C.*

Pike Circuit Court.

COMMONWEALTH OF KENTUCKY
vs.
EASTERN KENTUCKY COAL LANDS CORPORATION, ETC.

General Demurrer of Plaintiff to Answer of J. C. Twyman.

The plaintiff, Commonwealth of Kentucky, demurs to the
194 answer of J. C. Twyman, because same does not state facts sufficient to constitute, maintain, or support a defense.

COMMONWEALTH OF KENTUCKY.
By J. F. BUTLER, *Comlth. Atty.*

Filed October 16, 1907.
J. B. POLLEY, *Clerk.*

Pike Circuit Court.

COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
EASTERN KENTUCKY COAL LANDS CORPORATION, ETC., Defendants.

Demurrer.

1. The defendant, J. C. Twyman, demurs to plaintiff's petition and the allegations thereof, because the same does not state facts sufficient to constitute or support a cause of action against him.

2. Because the same is not good in law.

3. Defendant further demurs to plaintiff's petition and the allegations thereof because the same and the alleged cause of
195 action therein set forth is based upon and seeks to enforce the provisions of Article III of Chapter 22, Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 of the Acts of the general Assembly of the Commonwealth of Kentucky, approved March 15th, 1906, all of which are violative of the Compact and agreement made and entered into by and between the plaintiff and the Commonwealth of Virginia, evidenced by the Act of the General Assembly of the Commonwealth of Virginia entitled "An Act concerning the Erection of the District of Kentucky into an Independent State," approved December 18th, 1789; and further evidenced by an act of the first Congress of the United States, third session thereof, admitting the State of Kentucky into the Union of the United States, which act was approved February 4th, 1791; and further evidenced by the first, second third and present Constitutions of the Commonwealth of Kentucky adopted April 19th, 1792, 1795, June 11th, 1850, and September 28th, 1891, respectively; because same is violative of the Constitution of the Commonwealth of Kentucky, and especially of Sections 13, 14, and 19 of the Bill of Rights thereof, and violative of the Constitution of the United States and especially of Section 1, Article 14 of the Amendments to the Constitution of the United States, in that an enforcement of the provisions of said Article and Sections of said Acts as sought by plaintiff's petition, and in and of itself, operates to and does deprive defendant of his prop-
196 erty, as well as that of the other defendants herein, without due process of law, and denies to him and them the equal protection of the laws and said Article and sections of said Chapter and Act are unconstitutional and void.

Wherefore defendant prays the judgment of the Court.

HINES, CHANDLER, NORMAN AND
C. C. McCHORD,
Attorneys for Deft. J. C. Twyman.

Filed October 16, 1907.

J. B. POLLEY, *Clerk.*

Pike Circuit Court.

COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
EASTERN KENTUCKY COAL LANDS CORPORATION et al., Defendants.

Answer of Deft. Geo. H. Taylor.

The defendant, George H. Taylor, for Answer to the plaintiff's petition filed herein, comes and says:

That he denies that defendant, nor any of its predecessors in title, nor any one claiming by, through, or under them, or it at any time after the issuance of the patents described in plaintiff's petition before the filing of the petition has not caused the said land
197 or part thereof, or any interest therein, to be listed for assessment or taxation, or any purpose whatever in Pike County, or elsewhere, in the States of Virginia or Kentucky, or paid any taxes whatever upon the same or any part thereof or any interest therein.

And the defendant further denies that the owner or claimant of said tracts of land described in the petition or a part thereof, or any interest therein, under said patents described in plaintiff's petition, or any of them hitherto, or on, or before the first day of January, 1907, or at all, has not listed or caused said land to be listed for assessment and taxation as the owner or claimant of said land, or part thereof or interest therein, under said patents or of any one or more of them.

Defendant denies that by reason of the failure of the owner or owners, claimant or claimants of the said tracts of land, or a part thereof, or interest therein, under the said patents to pay the taxes which should have been assessed against him or them, or those under whom he or they claimed as the owner or claimant thereof as of the 15th day of September, 1901, 15th day of September, 1902, 15th day of September, 1903, 1st day of September, 1904, 1st day of September, 1905, that it or they became, or have become delinquent, or are delinquent, and defendant denies
198 that the failure of defendant, or other owners or claimants to pay the taxes which should have been assessed against them as of the dates aforesaid, that thereby the said tracts of land or any of them, or the title or titles, or claim or claims of title thereto, or interest therein of the owner or owners thereof, or part thereof, or interest therein, under the patents aforesaid, or any of them has become or is subject to forfeiture or transfer to the plaintiff of the claim or title of the owner or owners, claimant or claimants under said patents or any of them.

Defendant denies that it failed to list or cause to be listed for taxation in Pike County the said tracts of land described in plaintiff's petition on or before January 1, 1907, as required by Article III of the Act of March 15, 1906.

2. And for further answer defendant says:

He is the owner of an interest in said tract of three hundred thousand (300,000) acres of land granted by the Commonwealth of Virginia to Benjamin Haskell as set out in the plaintiff's petition and as such is entitled to have said land duly listed and assessed for taxation by the proper authorities and upon proper books of record in the several Counties of the Commonwealth of Kentucky in which said tract of land and any portion thereof is situated.

That he is desirous of having said tract of land duly listed
199 and assessed for taxation and to pay the taxes legally chargeable thereon; that defendant is advised and informed and so charges that said tract of land is situated partly in the Counties of Pike, Letcher, Floyd, and Knott in said State of Kentucky, but the defendant is not advised as to the exact area of said tract comprised in each of said Counties.

3. That defendant can and will establish in this proceeding a title to said tract of land in himself and his co-tenants upon which he could maintain an Action of ejectment.

4. The defendant says, further, that so much of said petition and proceeding herein and of the act of the Legislature of the Commonwealth of Kentucky entitled "An act relating to revenue and taxation" approved March 15th, 1906, and known as chapter 22, of the acts of 1906, as attempts and purports to deprive this defendant of the title to said tract of land, or any portion thereof except by the alternative of this defendant submitting to a judgment against him in this proceeding for a sum equal to the amount of the unpaid taxes that ought to have been charged upon said land for the period of Fifty years, together with interest thereon at the rate of

15% per annum, together with the costs and attorneys fees
200 for this proceeding as set out in said petition, and in paragraph 4, of article III of said Act, of the Legislature of Kentucky is illegal, unconstitutional and is in contravention of the compact between the Commonwealth of Virginia, and the Commonwealth of Kentucky, entitled "Act concerning the erection of Kentucky into and independent state" Approved December the 18th, 1789, and especially sections 7, to 10, both inclusive of said Act, and is also in contravention of paragraph 19, of the present constitution of the Commonwealth of Kentucky, and also section 171, of said constitution of Kentucky, and of the various statutes of limitation of said Commonwealth and including section 2523, of the Kentucky Statutes of 1903, contained in chapter 80, of said statutes Paragraph 5. And so much of said proceeding and Act of legislature as above described is also in violation of and contrary to the constitution of the United States and especially Section 1, of paragraph 10, of the first article thereof and also paragraph 1, of article 14, of amendments thereto in this that the Commonwealth of Kentucky by its laws requires and has required up to the time of the passage of said Act, March 15, 1906, the payment of not more than five years taxes where said taxes were delinquent, and all statutes of limitation applied to the Commonwealth itself by its

constitution and laws and said Act of March 15, 1906, pro-
201 vides for the collection of delinquent taxes upon the lands embraced therein commencing with the year 1901, and the

penalty provided by said Act for failure to list said land for taxation prior to January 1st, 1907, amounts in substance to confiscation of all said lands and deprives the owner thereof, of all the said property without due process of law and impairs the obligation of the contract heretofore entered into between the Commonwealth of Kentucky and the Commonwealth of Virginia, by the Act of Virginia of December the 18th, 1789, and to the Act of Congress made in pursuance thereof for the admission of the Commonwealth of Kentucky to the union, and also impairs the obligation of the contract between the Commonwealth of Kentucky, and the defendant Geo. H. Taylor by virtue of the constitution and statutes of the said Commonwealth heretofore existing and obtaining in regard to the taxation of lands and limitation of actions because the defendant is not permitted to redeem said land from the forfeiture alleged by the plaintiff by the payment of the taxes, interest and penalties heretofore prescribed by law or prescribed for those who shall have listed their lands for taxation prior to January 1st, 1906, but is required to pay all the taxes which should have been charged against said entire tract of land for a period of fifty years past to
202 gether with 15% interest and various penalties additional which amount so assessed and charged against said land is greater than the actual value thereof.

Paragraph 6.

This *the* defendant therefore prays to be allowed to file his counter claim in this action as provided by section 4, of article 3, of said Act, of March the 15th, 1906, accompanied by bond as therein provided praying to be allowed to purchase back from the Commonwealth the title and claim so forfeited in this action to so much of said tract of land as to which the plaintiff and his co-tenants have good and legal title after deduction — any portion thereof which may be held by adverse claimants by superior title, either by adverse possession or otherwise by paying in the manner provided in said Act, a sum equal to the amount of the unpaid taxes charged, and that ought to have been charged against said defendant and those under whom he claims as the owners of said land for the years 1901, 1902, 1903, 1904 and 1905, and all subsequent years together with the interest and penalties provided by law in case of the redemption of land sold for the non-payment of taxes.

And defendant prays that he be allowed to file said counter-claim and bond, and that this cause be referred to a Master Com
203 missioner in chancery for the purpose of ascertaining the amount of said delinquent taxes for the years 1901, and all subsequent years.

Wherefore defendant prays that the plaintiff's petition be dismissed, and for all general, proper and equitable relief.

A. D. PRESTON.
For Geo. H. Taylor, Defendant.

COMMONWEALTH OF KENTUCKY.
County of Pike:

A. D. Preston being duly sworn, says that he is the attorney for the defendant Geo. H. Taylor named in the foregoing answer that the said Geo. H. Taylor is now absent from Pike county, State of Kentucky and that the statements contained herein are true as he believes.

A. D. PRESTON.

Subscribed and sworn to before me by A. D. Preston, this the 7th day of Oct., 1907. My commission as Notary public expires the 15th day of January, 1910.

ROBERT L. MILLER, *N P.*

Filed Oct. 16th, 1907.
J. B. POLLEY, *Clk.*

204 Pike Circuit Court, October Term, 16th Day of October, 1907.

COMMONWEALTH OF KENTUCKY
vs.
EASTERN KENTUCKY COAL LANDS CORPORATION, ETC.

Order.

Came A. E. Auxier, attorney for Non-resident and unknown defendants, and filed report herein.

The defendant, Eastern Kentucky Coal Lands Corporation having on July 1, 1907, filed special demurrer and general demurrer to the petition and written motion to strike therefrom certain matters set out in said motion, same are now noted of record.

The defendant, C. B. Hillhouse, having on July 1, 1907 filed special demurrer and general demurrer to the petition and motion to strike therefrom certain matters set out in said motion, and same are now noted of record.

The defendant, George H. Taylor, filed special and general demurrer to the petition and also written motion to strike certain matters therefrom.

The defendant, J. C. Twyman, having filed on August 5th, 1907, written motion to elect and paragraph, the same is now noted of record.

205 The defendants, Cortland Van Camp, W. N. Pickerill, G. G. Hughes, having on August 5th, 1907 filed general demurrer to the petition, same is now noted of record.

This cause having been called on third day of this Term of Court, was set out over for hearing upon motion of defendants, Twyman and Taylor, until Tuesday, October 15, 1907.

This cause coming on for hearing on October 15th, 1907, upon several demurrers, motions to strike, motions to elect and paragraph, as herein before set forth, and the Court having heard argument of

counsel representing plaintiff, and also counsel representing Eastern Kentucky Coal Lands Corporation and C. B. Hillhouse, and George H. Taylor, and having considered briefs filed by counsel representing defendants, Cortland Van Camp, W. N. Pickerill, and G. G. Hughes, and the defendant, J. C. Twyman, and the Court being sufficiently advised, orders and adjudges that the special demurrers of Defendants, Eastern Kentucky Coal Lands Corporation, C. B. Hillhouse, and George H. Taylor, be and the same are and each is hereby overruled, and the said defendants, Eastern Kentucky Coal Lands Corporation, C. B. Hillhouse, and George H. Taylor, except.

It is further ordered and adjudged that the motions to strike filed by defendants, George H. Taylor, be and same are and
206 each is hereby overruled and the said Taylor excepts.

It is ordered and adjudged that the motion of defendant, J. C. Twyman, to paragraph the petition and to elect which of the alleged causes of action plaintiff will prosecute, be and the same are and each is hereby overruled, and the said J. C. Twyman excepts.

Came the defendant, J. C. Twyman, and filed general demurrer to the petition.

Upon consideration whereof and of the arguments of Counsel and brief filed for and on behalf of J. C. Twyman, and the Court being sufficient- advised, orders and adjudges that the general demurrer of said J. C. Twyman, Cortland Van Camp, W. N. Pickerill, G. G. Hughes, George H. Taylor, C. B. Hillhouse and Eastern Kentucky Coal Lands Corporation, be and the same and each is hereby overruled, and the said J. C. Twyman, Cortland Van Camp, W. N. Pickerill, G. G. Hughes, Geo. H. Taylor, C. B. Hillhouse and Eastern Kentucky Coal Lands Corporation excepts.

Upon consideration of the motions to strike filed by defendants, Eastern Kentucky Coal Lands Corporation and C. B. Hillhouse, it is ordered and adjudged that the matter set out in said motions and numbered "First" and being that part of the petition begin-
207 ning on page 18 with the words "And plaintiff states that" on 20th line of said page down to and including 34th line, ending with the words, "Or any of them", and the same is now stricken from the petition, and plaintiff accepts.

Motions on behalf of Eastern Kentucky Coal Lands Corporation and C. B. Hillhouse to strike from the petition the matters set forth in paragraphs "Second" and "Third" of said written motions, are and each is now overruled, and said Eastern Kentucky Coal Lands Corporation and C. B. Hillhouse except.

Came J. C. Twyman and filed answer herein.

Came plaintiff and filed general demurrer to the answer of J. C. Twyman, and this cause is submitted thereupon.

Came defendant, George H. Taylor, and filed answer herein.

Came plaintiff and filed general demurrer to the answer of George H. Taylor and this cause is submitted on same.

The defendants, Eastern Kentucky Coal Lands Corporation, and Chas. B. Hillhouse and Cortland Van Camp and W. N. Pickerill and G. G. Hughes are given until the 17th day of the present term in which to file answer herein.

208 Pike Circuit Court.

COMMONWEALTH OF KENTUCKY
vs.
EASTERN KENTUCKY COAL LANDS CORPORATION, ETC.

General Demurrer of Plaintiff to Answer of George H. Taylor.

The plaintiff, Commonwealth of Kentucky, demurs to the answer of George H. Taylor, and to each paragraph thereof because the same does not state facts sufficient to constitute, maintain or support a defense.

J. F. BUTLER, *Com'ty Att'y,*
Attorney for Plaintiff.

Filed October 16, 1907.
J. B. POLLEY, *Clerk.*

October Term, 17th Day of October, 1907.

COMMONWEALTH OF KENTUCKY
vs.
EASTERN KENTUCKY COAL LANDS CORPORATION, ETC.

Order.

209 This cause having been submitted and heard upon the general demurrer of plaintiff to the answer of Geo. H. Taylor, and each paragraph thereof, and the Court being sufficiently advised, orders and adjudges that said demurrer be, and it is, now overruled as to paragraph one (1) of said answer, and plaintiff excepts; and that it be, and it is now sustained as to paragraphs two (2), three (3), four (4), five (5), and six (6) of said answer, and said defendant, Taylor excepts.

Pike Circuit Court, October Term, 25th Day of October, 1907.

Equity.

COMMONWEALTH OF KENTUCKY
vs.
EASTERN KENTUCKY COAL LANDS CORPORATION, ETC.

Answer and Cross-petition of Charles B. Hillhouse, filed.

210 Pike Circuit Court.

COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
EASTERN KENTUCKY COAL LANDS CORPORATION et al., Defendants.

Answer and Cross-Petition of Charles B. Hillhouse.

Now comes the defendant, Charles B. Hillhouse, and for answer to plaintiff's petition says: That he refers to, and adopts as his answer

and cross-petition herein the answer and cross-petition of Eastern Kentucky Coal Lands Corporation filed herein.

Wherefore defendant prays as in said answer and cross-petition, and for all proper, general and equitable relief.

ROBERT L. MILLER,
THOS. H. HARMAN,
JAMES H. HAZELRIGG,
WM. J. HENDRICK,
Att'ys for Def't Hillhouse.

Robert L. Miller states that he is one of the attorneys of Charles B. Hillhouse for the County of Pike who is now absent from the County of Pike and State of Kentucky, and that statements
211 contained in the foregoing answer and Cross-petition are true as he believes.

ROBERT L. MILLER.

Sworn to before me this 25th day of October, 1907.

A. D. CLINE,
Ex. Pike Co., Ky.

Filed Oct. 25, 1907.
J. B. POLLEY, *Clerk.*

Oct. Term, 25th Day of Oct., 1907, Pike Circuit Court.

Equity.

COMMONWEALTH OF KENTUCKY
vs.
EASTERN KENTUCKY COAL LANDS CORPORATION, ETC.

212 Answer and cross-petition of Eastern Ky. Coal Lands Corporation filed.

Pike Circuit Court.

COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
EASTERN KENTUCKY COAL LANDS CORPORATION et al., Defendants

Answer and Cross-Petition of Eastern Ky. Coal Lands Corporation

The defendant, Eastern Kentucky Coal Lands Corporation, for answer to the plaintiff's petition filed herein, comes and says, that it denies that this defendant, nor any of its predecessors in title nor any one claiming by, through or under them, or it at any time after the issuance of the patents described in plaintiff's petition before the filing of the petition has not caused the said land or part thereof, or any interest therein to be listed for assessment or taxation for any purpose whatever in Pike County or elsewhere, in the

States of Virginia or Kentucky or paid any taxes whatever upon the same or any part thereof or any interest therein.

And the defendant further denies that the owner or claimant of said tracts of land described in the petition or a part thereof or any interest therein, under said patents described in plaintiff's
213 petition or any of them hitherto or on or before the first day of January, 1907 or at all has not listed or caused said land to be listed for assessment and taxation as the owner or claimant of said land or part thereof or interest therein under said patents or of any one or more of them.

Defendant denies that by reason of the failure of the owner or owners, claimant or claimants, of the said tracts of land or a part thereof or interest therein under the said patents to pay the taxes which should have been assessed against him or them or those under whom he or they claimed as the owner or claimant thereof as of the 15th day of September, 1901, 15th day of September, 1902, 15th day of September, 1903, 1st day of September, 1904, 1st day of September, 1905, that it or they became or have become delinquent or are delinquent, and defendant denies that the failure of defendant or other owners or claimants to pay the taxes which should have been assessed against them as of the dates aforesaid, that thereby the said tracts of land or any of them or the title or titles or claim or claims thereof, or interest therein under, the patents aforesaid, or any of them *has* become or *is* subject to forfeiture or transfer to the plaintiff of the claim or title of their owner or owners, claimant or claimants under said patents or any of them. Defendant denies that it failed to list or caused to be listed for taxation in Pike County, the said tracts of land described in plaintiff's petition on
214 or before January 1st, 1907, as required by Article III of the Act of March 15, 1906.

Par. II.

And for further answer the defendant says, that on the 27th day of December, 1906, this defendant filed and caused to be filed in the office of the Clerk of the Pike County Court its petition duly verified by its President asking that the lands owned by it, described in the plaintiff's petition, be listed for taxation in the County of Pike for State, County, and local purposes, pursuant to the provisions of Article III of the Act of March 15, 1906, and as required by the said Article of said Act set *for* same for hearing in the Pike County Court on the 15th day of January, 1907.

That a similar petition was filed in the Floyd County Court on the 27th day of December, 1906, and in the Pike County Court on the Same day and in Knott County Court on December 29, 1906; and in Letcher County Court on the 31st day of January, 1906; and the said causes set for hearing in the respective County Courts in Floyd County on Monday, January 14, 1907; in Pike County on Tuesday, January 15, 1907; In Knott County on Wednesday, January 16th, 1907; and in Letcher County on Thursday,
215 January 17th, 1907.

That upon the filing of said petition, John C. C. Mayo,

J. W. M. Stewart, Z. T. Vinson, Walter S. Harkins, W. F. Hite, and Ben Johnson acting in concert for themselves and the Northern Coal & Coke Company, Big Sandy Company, and other interests similarly situated, claiming mineral and timber rights under junior claims within the boundaries of defendant's elder grants, immediately began a systematic effort to array all local interests against the defendant, and by threats of assassination, menaces of violence, personal injury and disgrace sought to array local prejudice against this defendant and to intimidate and terrorize its counsel, agents, and employees, by menaces and threats of personal violence and injury, and on the day set for the hearing in Floyd County January 14th, 1907, brought or caused to be brought to the County Seat and into the Court room where the hearing was had, — excited angry crowd of armed men for the express purpose of intimidating counsel for defendant, influencing the Court and preventing defendant from securing an assessment for taxation of the lands described by plaintiff in its petition.

That the Floyd County Court dismissed the petition of defendant and thereupon owing to the inflamed state of the people it was agreed that a similar order to that entered in the Floyd County Court should be entered in the Pike County Court which was done accordingly.

216 That on January 15th, 1907, the hearing was had in the Pike County Court when the said defendants, John C. C. Mayo, J. W. M. Stewart, Z. T. Vinson, Walter S. Harkins, W. F. Hite and Ben Johnson brought or caused to be brought into Pikeville, the County Seat, and unto the Court room where the hearing was had, an excited, angry crowd of armed men for the express purpose of intimidating counsel for defendant, influencing the Court and preventing defendant from securing — for taxation of the lands described by plaintiff in its petition.

That upon the dismissal of its petition in the County Court, the defendant prosecuted an appeal to this Honorable Court and from the judgment of this court dismissing its petition it has prosecuted an appeal to the Court of Appeals of Kentucky where said appeal is now pending unde-rmined. That from December 27th, 1906, until now the defendant has been urgently asking that its lands described in plaintiff's petition be assessed for taxation as required by Article III of the Act of March 15th, 1906, and has at all times been ready and willing to pay any and all assessments for taxes or public dues made against said lands.

Defendant refers to, and makes part hereof the record
217 in this Court on Appeal from the Pike County Court, "In the matter of the application of Eastern Kentucky Coal Lands Corporation, incorporated to list for assessment and taxation and to have assessed the taxes which ought to have been assessed for the years 1901, 1902, 1903, 1904, and 1905, upon the lands described in the petition."

Defendant says it is the owner of said lands described in the petition, and that the refusal of the County Court of Pike County to assess for taxation the lands as listed by defendant on December 27th,

1906, was a denial of justice to this defendant, by which this defendant was deprived of valuable property rights, denied the equal protection of the laws, and the obligation of the contract guaranteeing its titles impaired, in violation of the Compact between Kentucky and Virginia, and the Constitution of Kentucky, and the Constitution of the United States.

Par. III.

Further answering, defendant says: that the violent and lawless demonstration against this defendant enacted in the Court room of the Floyd County Court, and in the County Seat of Floyd County, on the 14th day of January, and in Pikeville on January 15th, 1907, was, as defendant is informed and believes and therefore charges part of a deliberate plan and scheme devised by John
218 C. C. Mayo, J. W. M. Stewart, Z. T. Vinson, Walter S. Harkins, W. F. Hite, and Ben Johnson, acting in concert for themselves and the Northern Coal & Coke Company, Big Sandy Company, and other interests similarly situated, to acquire title of the defendant to the grants owned by it and described in the petition herein. That Article III of the Act of March 15, 1906, was enacted at the behest and under promotion and manipulation of John C. C. Mayo, J. W. M. Stewart, W. F. Hite, Z. T. Vinson, Walter S. Harkins, and Ben Johnson acting in concert for themselves and the Northern Coal & Coke Company, Big Sandy Company, and other interests similarly situated, with the intent and purpose of acquiring under the terms of its provisions the title of defendant to the lands covered by the grants described in the petition herein, but with the hope and expectation that the owners of title under these elder grants would not appear to list its land described in the petition herein for taxation prior to January 1, 1907, John C. C. Mayo, J. W. M. Stewart, Z. T. Vinson, Walter S. Harkins, W. F. Hite, and Ben F. Johnson, acting in concert for themselves and the Northern Coal & Coke Co., and other interests similarly situated, in a desperate effort and as a last resort to make effective the provisions of Article III of the Act of March 15, 1906, excited the citizens of Floyd
219 County and Pike and Letcher and Knott Counties — representations that defendant intended and was about to eject — their homes all persons living within the boundaries of its said grants described in the petition herein and under this and other pretenses gathered hostile and excited armed crowds to the Floyd and Pike County Court houses to menace and intimidate the defendant, its attorneys and representatives and to influence the Court in its action as hereinbefore stated.

Defendant further states that John C. C. Mayo, Walter S. Harkins, J. W. M. Stewart, W. F. Hite, Z. T. Vinson and Ben F. Johnson, The Northern Coal & Coke Co., the Beaver Creek Coal & Coke Co., The Brushy Creek Timber Co., — and the Laclede Coal Co., the last five named being Corporations, are claiming to own lands, timber, and mineral rights lying within the boundaries and embraced within the patents covering the lands owned by defendant under the grants described in the petition, and that said John C. C. Mayo, J. W. M. Stewart, Walter S. Harkins, W. F. Hite, Ben F. Johnson, The

Northern Coal & Coke Company, The Big Sandy Company, The Brushy Creek Timber Company, The Beaver Creek Coal & Coke Company, and the Laclede Coal Company, the last five named being Corporations, and not the Commonwealth of Kentucky, are the real parties in interest herein as plaintiff- in this suit. Defendant
220 makes this answer a Cross petition against John C. C. Mayo, Walter S. Harkins, J. W. M. Stewart, W. F. Hite, Z. T. Vinson, Ben F. Johnson, the Northern Coal & Coke Company, The Big Sandy —, the Brushy Creek Timber Company, The Beaver Creek Coal & Coke Company, and The Laclede Coal Company, the last five named being Corporations and asks that process issue against each of said parties requiring them to answer this defendant's Cross-petition herein.

Wherefore defendant prays that the plaintiff's petition be dismissed; that John C. C. Mayo, J. W. M. Stewart, The Northern Coal & Coke Company, The Big Sandy Company, The Brushy Creek Timber Company, The Beaver Creek Coal & Coke Company, and The Laclede Coal Company, the last five named being Corporations, be made defendants herein and required to answer this Cross-petition and to disclose whatever interests they or any of them have in lands, mineral or timber or other rights in the territory described in plaintiff's petition embraced within the patent boundaries of defendant's grants, and to describe same and state the title or titles under which they or any of them claim an interest in said lands within defendant's boundaries and for all general, proper and equitable *thereof*.

ROBERT L. MILLER,
THOMAS H. HARMAN,
221 JAMES H. HAZELRIGG,
WM. J. HENDRICK,
For Defendant.

Robert L. Miller states that he is one of the Attorneys of Eastern Kentucky Coal Lands Corporation for the County of Pike and that its Officers are all absent from the County of Pike and State of Kentucky, and that the statements contained in the foregoing answer and cross-petition are true as he believes.

ROBERT L. MILLER.

Sworn to before me this 25th day of Oct., 1907.

A. D. CLINE,
Ex. Pike Co., Ky.

Filed October 25, 1907.

J. B. POLLEY, *Clerk.*

Pike Circuit Court, Oct. Term, 18th Day, 29th Day of Oct., 1907.

COMMONWEALTH OF KENTUCKY, Plaintiff.
vs.
EASTERN KENTUCKY COAL LANDS CORPORATION, ETC., Defendants.

Order.

It appearing that G. C. Hughes, W. N. Pickerill, and
222 Cortland Van Camp, defendants having filed demurrer to petition which has heretofore been considered by the Court and overruled, and the defendants having been given until the 17th day of the present Term in which to file answers herein and having failed to file answers to said petition, the allegations of said petition in so far as *it* affects the said defendants, G. C. Hughes, W. N. Pickerill, and Cortland Van Camp, are taken as true.

Pike Circuit Court.

COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
EASTERN KENTUCKY COAL LANDS CORPORATION, ETC., Defendants.

Demurrer.

The plaintiff, Commonwealth of Kentucky, demurs to the Second Paragraph of the Answer and Cross petition of the defendant, Charles B. Hillhouse, because the same does not state facts sufficient to constitute a defense or cause of action, and is not good in law or Equity.

Demurs to the Third Paragraph of the Defendant's an-
223 swer and cross-petition, because it does not state facts sufficient to constitute a defense or cause of action, and is not good in law or equity.

COMMONWEALTH OF KENTUCKY,
By —— ——, *Commonwealth's Attorney.*

Filed October 29, 1907.
J. B. POLLEY, *Clerk.*

Pike Circuit Court.

COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
EASTERN KY. COAL LANDS CORPORATION, ETC., Defendants.

Demurrer.

Comes the defendants on cross-petition, John C. C. Mayo, Walter S. Harkins, J. W. M. Stewart, W. F. Hite, Z. T. Vinson, Ben F. Johnson, Brushy Creek Timber Co., The Beaver Creek Coal & Coke

Company, The Laclede Coal Company, Northern Coal & Coke
224 Co., and the Big Sandy Company and enters this, their appearance to the cross-petition filed herein — Easter- Ky. Coal Lands Corporation and for demurrer thereto, and especially to the Second and Third Paragraphs, and for demurrer states that the Second Paragraph of the said Answer and Cross Petition does not state facts sufficient to constitute a defense, nor does it state sufficient facts to constitute a cause of action against them, or either of them, and is not good in Law or Equity.

States that the Third Paragraph of the said Answer and cross petition does not state facts sufficient to constitute a defense nor does it state sufficient facts to constitute a cause of action against them, or either of them, and is not good in law or equity.

HAGER & STEWART, ETC.,
Counsel for Defendant- on Cross-petition.

Filed October 29, 1907.
J. B. POLLEY, *Clerk.*

225 Pike Circuit Court.

COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
EASTERN KY. COAL LANDS CORPORATION, ETC., Defendants.

Motion to Strike.

Now comes the defendants, in cross petition, John C. C. Mayo, Walter S. Harkins, J. W. M. Stewart, W. F. Hite, Z. T. Vinson, Ben F. Johnson, Brushy Creek Timber Company, The Beaver Creek Coal & Coke Company, the Laclede Coal Co., Northern Coal & Coke Company, and the Big Sandy Company, and moves the Court to strike out the Second Paragraph, also the Third Paragraph of the defendant, Eastern Kentucky Coal Lands Corporation's answer and cross-petition filed October 25, 1907; and for cause assigns that the same is not good, is irrelevant and redundant to the matters in issue.

HAGER & STEWART & OTHERS,
Counsel for Defendant-.

Filed October —, 1907.
J. B. POLLEY, *Clerk.*

226 Pike Circuit Court.

COMMONWEALTH OF KENTUCKY, Plaintiffs,
vs.
EASTERN KENTUCKY COAL LANDS CORPORATION et al., Defendants.

Demurrer.

The plaintiff, Commonwealth of Kentucky, demurs to the second Paragraph of the Answer and cross-petition of the defendant, Eastern Kentucky Coal Lands Corporation because the same does not

state facts sufficient to constitute a defense or cause of action, and is not good in Law or Equity.

Demurs to the third paragraph of the defendant's answer and cross-petition because it does not state facts sufficient to constitute a defense or cause of action, and is not good in Law or Equity.

COMMONWEALTH OF KENTUCKY,
By —— ——,
Commonwealth's Attorney.

Filed October 29, 1907.
J. B. POLLEY, *Clerk.*

227 Pike Circuit Court.

COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
EASTERN KENTUCKY COAL LANDS CORPORATION, ETC., Defendants.

Motion to Strike.

Came this day the Commonwealth of Kentucky, by its Commonwealth attorney, John F. Butler, and entered motion to strike from the defendants, Charles B. Hillhouse, Answer and cross-petition filed October 25, 1907, the entire Second paragraph of said answer and cross-petition; also the third paragraph of said answer and cross-petition, and for cause assigns that the same is not good, is irrelevant, and redundant to the matters in issue.

—— ——,
Commonwealth's Attorney.

Filed October 29, 1907.
J. B. POLLEY, *Clerk.*

228 Pike Circuit Court.

COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
EASTERN KENTUCKY COAL LANDS CORPORATION, ETC., Defendants.

Demurrer.

Comes the defendants on cross-petition, John C. C. Mayo, Walter S. Harkins, J. W. M. Stewart, W. F. Hite, Z. T. Vinson, Ben F. Johnson, Brushy Creek Timber Company, Beaver Creek Coal & Coke Company, Laclede Coal Company, Northern Coal & Coke Company, and the Big Sandy Company and enters this their appearance to the cross-petition filed herein by Charles B. Hillhouse, and for demurrer thereto, and especially to the second paragraph and the third paragraph, and for demurrer states that the second paragraph of the said answer and cross-petition does not state sufficient facts to constitute a defense, nor does it state sufficient facts to constitute a cause of action against them or either of them, and is not good in Law or Equity.

States that the third paragraph of the said answer and cross-petition does not state facts sufficient to constitute a defense nor does it state sufficient facts to constitute a cause of action against
229 them, or either of them, and is not good in Law or Equity.

HAGER & STEWART, ETC.,
Counsel for Defendant on Cross-Petition.

Filed October 29, 1907.
J. B. POLLEY, *Clerk.*

Pike Circuit Court.

COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
EASTERN KENTUCKY COAL LANDS CORPORATION, ETC., Defendants.

Motion to Strike.

Came this day the Commonwealth of Kentucky by its Commonwealth's Attorney, John F. Butler, and entered motion to strike from the defendant's, Eastern Kentucky Coal Lands Corporation, answer and cross-petition filed October 25, 1907, the entire second paragraph of said answer and cross-petition, also the third paragraph of said answer and cross-petition, and for cause assigns that the same is not good, is irrelevant and redundant to the matters in issue.
230

_____,
Commonwealth's Attorney.

Filed October 29, 1907.
J. B. POLLEY, *Clerk.*

Pike Circuit Court.

COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
EASTERN KENTUCKY COAL LANDS CORPORATION, ETC., Defendants.

Motion to Strike.

Now comes the defendants on cross-petition, John C. C. Mayo, Walter S. Harkins, J. W. M. Stewart, W. F. Hite, Z. T. Vinson, Ben F. Johnson, Brushy Creek Timber Company, The Beaver Creek Coal & Coke Company, The Laclede Coal Company, Northern Coal & Coke Company, and the Big Sandy Company, and moves the Court to strike out the second paragraph, also the third paragraph of the defendant, Charles B. Hillhouse's answer and Cross-petition filed October 25, 1907; and for cause assigns that the same is not good, is irrelevant and redundant to the matters in issue.
231

HAGER & STEWART & OTHERS,
Counsel for the Defendant on Cross-Petition.

Filed October 29, 1907.
J. B. POLLEY, *Clerk.*

Pike Circuit Court, Oct. Term, 30 Day of Oct., 1907.

COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
EASTERN KENTUCKY COAL LANDS CORPORATION, ETC., Defendants.

Order.

This cause having been submitted on demurrer to the second and third paragraphs of defendant's, Charles B. Hillhouse, answer and cross-petition, and the Court being advised sustains the demurrer to the second and third paragraphs of the defendant's answer and cross-petition and overrules the demurrer as to the first paragraph: to the order overruling the demurrer to the first paragraph the Commonwealth of Kentucky excepts, and to the order sustaining
232 the demurrer to the second and third paragraphs the defendant, Charles B. Hillhouse, excepts.

Pike Circuit Court. Oct. Term, 30 Day of Oct., 1907.

COMMONWEALTH OF KENTUCKY, Plaintiff.
vs.
EASTERN KENTUCKY COAL LANDS CORPORATION, ETC., Defendants.

Order.

This cause having been submitted on demurrer to the second and third paragraphs of defendant's, Eastern Kentucky Coal Lands Corporation, answer and cross-petition, and the Court being advised, sustains the demurrer to the Second and third paragraphs of the defendant's answer and cross-petition, and overrules the demurrer as to the first paragraph: to the order overruling the demurrer to the first paragraph the Commonwealth of Kentucky excepts, and to the order sustaining the demurrer to the second and third paragraphs the Eastern Kentucky Coal Lands Corporation excepts.

233 Pike Circuit Court, Oct. Term, 30 Day of Oct., 1907.

COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
EASTERN KENTUCKY COAL LANDS CORPORATION, ETC., Defendants.

Order.

The defendants in the cross-petition, to wit: J. C. C. Mayo, W. F. Hite, W. S. Harkins, J. W. M. Stewart, B. F. Johnson, Z. T. Vinson, Northern Coal & Coke Company, Big Sandy Company, Brushy Creek Timber Company, Beaver Creek Coal & Coke Company, and Laclede Coal & Coke Company, having filed demurrers to the answers and cross-petitions of the Eastern Kentucky Coal Lands Corporation and

Charles B. Hillhouse, in so far -- it affects the above named defendants in the Cross-petition, and the same having been submitted on said demurrers, and the Court being advised, sustains the said demurrers to the answer and cross-petition in so far as it affects these cross petition defendants; and the defendants, the Eastern Kentucky Coal Lands Corporation, and Charles B. Hillhouse, failing to plead further it is ordered that their cross petition against the defend-
234 ants, J. C. C. Mayo, W. F. Hite, W. S. Harkins, J. W. M. Stewart, Z. T. Vinson, B. F. Johnson, Northern Coal & Coke Company, Big Sandy Company, Brushy Creek Timber Company, Beaver Creek Coal & Coke Company, and Laclede Coal and Coke Company, be and the same is now dismissed, and they will recover from the Eastern Kentucky Coal Lands Corporation, and Charles B. Hillhouse, their costs herein expended; to which ruling the defendants, Eastern Kentucky Coal Lands Corporation and Charles B. Hillhouse object and except.

Pike Circuit Court, Feb. Term, 6th Day of Feb., 1908.

Equity.

COMMONWEALTH OF KENTUCKY
VS.
EASTERN KY. COAL LANDS CORPORATION, ETC.

Set down for hearing on the 10th day of present term.

Pike Circuit Court, Feb. Term, 13th Day of Feb., 1908.

235 COMMONWEALTH OF KENTUCKY
VS.
EASTERN KY. COAL LANDS CORPORATION, ETC.

Order.

This cause being call- on the regular call of the docket this day, pursuant to setting thereof on a former day of this term, and there now being on trial a felony case, which cannot be completed today, it is ordered that the hearing and trial of the above entitled action be, and it is now passed and set down for trial and hearing on tomorrow, Friday, Feb. 14, 1908.

Pike Circuit Court, Feb. Term, 14th Day of Feb., 1908.

COMMONWEALTH OF KENTUCKY, Plaintiff,
VS.
EASTERN KY. COAL LANDS CORPORATION, ETC., Defendants.

Order.

Came the defendant, Eastern Kentucky Coal Lands Corporation and Charles B. Hillhouse, tendered and offered to file an
236 amended answer and cross-petition, to the filing of which plaintiff objected. The court sustained the objection to filing

said amendment, and orders that said amendment be endorsed "Tendered and offered to be filed on date of this order" and said Eastern Kentucky Coal Lands Corporation and Charles B. Hillhouse objected and excepted to the ruling of the court on their motion to file said amendment.

The defendant, Eastern Kentucky Coal Lands Corporation and Charles B. Hillhouse, file as an exhibit with their answer the entire record in the Pike county and circuit courts, in the matter of the application of the Eastern Kentucky Coal Lands Corporation to have listed and have assessed the properties therein referred to, and defendants, Eastern Kentucky Coal Lands Corporation and Charles B. Hillhouse failing and declining to plead further as against said J. C. C. Mayo and others, it is ordered and adjudged that said cross-petitions of Eastern Kentucky Coal Lands Corporation and Charles B. Hillhouse be, and they are and each is now dismissed. And said J. C. C. Mayo and other defendants thereto are adjudged their costs herein expended against said Eastern Kentucky Coal Lands Corporation and Charles B. Hillhouse, for which they may have execution, to which said Eastern Kentucky Coal Lands Corporation and Charles Hillhouse object and except.

237 Pike Circuit Court.

COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
EASTERN KENTUCKY COAL LANDS CORPORATION & ETC., Defendants.

Amended Answer and Cross-Petition of Eastern Kentucky Coal Lands Corporation.

Now comes the Eastern Kentucky Coal Lands Corporation and amends its answer and cross-petition filed herein and for amendment says:

(1) That this defendant was duly incorporated under the laws of the Commonwealth of Virginia on the 7th day of February, 1906, and its purposes were and are, as stated in its charter, "To purchase acquire and hold lands, and titles, claims and interests, in upon or affecting lands, and appurtenances thereto, situated in all or any of the states of Kentucky, Virginia and West Virginia, and to do whatever may be deemed expedient to protect and enforce said titles, claims and interests, and if it be deemed expedient to improve and develop said lands or any parts thereof or interests therein, by operating or otherwise and to sell and convey, mortgage, lease or otherwise dispose of any or all such lands, titles, claims, and interests
238 aforesaid or parts thereof at one time or from time to time as may be deemed expedient."

(2) That for many years prior to the incorporation of this defendant the titles to the lands described in the plaintiff's petition herein had been unsettled because the true title was vested in those who were entitled thereto under and by virtue of the grants from the Commonwealth of Virginia referred to in the Plaintiff's peti-

tion herein except in so far as the right of entry of said true owners to parts thereof had been tolled by an actual adverse possession by others for a period of time and under the other conditions required by law to toll such right of entry of said true owners that the evidence regarding the origin condition and extent of actual adverse possession to any parts of said land was generally vague indefinite conflicting and not of record and the threats by some of the occupants of violence against any and all claiming title under said grants from the Commonwealth of Virginia, prevented said true owners from entering upon any parts of said land or from ascertaining or protecting the lawful interests therein whereby the development of the resources of said lands had been retarded beause the title thereto was regarded by investors as unmarketable that for the purpose of uniting under one ownership the titles claims
239 and interests of those deriving the same from said grants from Virginia and of consolidating the same with claims by adverse possession of the lands in order to have marketable title thereto for purposes of development of the resources of said land the defendant Charles B. Hillhouse and his associates had already prior to the incorporations of this defendant spent much time and money in examining records in the State of Virginia, and Kentucky and elsewhere and had acquired much information relating to what appeared to be such earliest titles of record, claims, and interests in the counties of Pike, Floyd and Letcher in the State of Kentucky and the claimants thereof, and had contracted to purchase from such claimants and was then negotiating with and expecting to purchase from many other claimants of similar titles, claims and interests in and to lands in said counties, the aggregate quantity of land covered or affected by such titles, claims, and interests purchased or sought to be purchased by said Hillhouse, from such claimants, being between Three hundred thousand acres and Five hundred thousand acres.

(3) That thereafter on the 8th day of February, 1906, this defendant, Eastern Kentucky Coal Lands Corporation, entered — an agreement with said defendant Charles B. Hillhouse, in writing and under the seals of the parties thereto, executed acknowl-
240 edged and delivered on said 8th day of February, 1906, whereby among other things said Hillhouse for a valuable consideration duly agreed to sell and on receipt of the consideration therein stated to convey to said corporation "To-with this defendant or its assigns and if such titles claims and interests then, or thereinafter purchased by said Hillhouse that said corporation (to wit, this defendant) should elect to purchase; that immediately thereupon said Hillhouse proceeded diligently to fulfill said agreement and to complete negotiating and purchase- such titles, claims and interests and has ever since continued so to do and said Corporation (to wit, this defendant) has from time to time elected to purchase many of said titles, claims, and interests in and to the various tracts of land described in the plaintiff's petition herein; and by deeds from said Charles B. Hillhouse to this defendant dated and duly acknowledged and delivered on the 21st and 24th days of December, 1906,

in pursuance of said Hillhouse's prior agreements to convey to this defendant including the aforesaid agreement of the 8th day of February, 1906, said Charles B. Hillhouse for valuable considerations duly conveyed to this defendant said Eastern Kentucky Coal Lands Corporation titles, claims, and interests in and to each and all of said tracts of land which said Hillhouse prior thereto had ac-
241 quired by deeds to him duly executed, acknowledged and delivered by many owners of undivided interests in said tracts of land respectively;

(4) That this defendant was not an owner or claimant of any of the lands described in the plaintiff's petition herein, or of any part thereof or interest therein on the 15th day of September, 1901, nor on the 15th day of September, 1902, nor on the 15th day of September, 1903, nor on the 1st day of September, 1904, nor on the 1st day of September, 1905, nor at any time between or prior to said days, nor thereafter prior to the aforesaid 8th day of February, 1906, on which last mentioned day this defendant, Eastern Kentucky Coal Lands Corporation and the defendant herein, Charles B. Hillhouse entered into the agreement aforesaid; that said Hillhouse was not an owner or claimant of any of the tracts of land described in the plaintiff's petition herein, or of any part thereof, or interest therein, on, or at any time prior to the 1st day of September, 1905, and that none of the titles, claims and interests so purchased by said Hillhouse, were purchased or conveyed or agreed to be conveyed to him until after the 1st day of September, 1905; that such titles, claims, and interests were respectively in and to undivided shares of the tracts described in the plaintiff's petition herein; that some thereof were purchased by said Hillhouse and sold
242 by him to this defendant prior to the enactment of the Act relating to Revenue and Taxation, approved March 15, 1906, and described in the plaintiff's petition herein.

(5) That during all the said years, 1901, 1902, 1903, 1904, 1905, and for many years prior thereto and ever since continuously until the present time, those under whom this defendant claims, and this defendant ever since it has acquired title thereto, have and has been prevented from entering upon said lands to possess or enjoy any part thereof or to ascertain what parts thereof has been adversely held for a period sufficient to toll the right of entry of those under whom this defendant claims or of this defendant, by a state of violence and by fear of bodily harm and of death, threatened by some of the occupants of parts of said lands against any and all persons claiming title or interest under the grants from the Commonwealth of Virginia set forth in the plaintiff's petition herein, and under which this defendant claims title and interest as an owner of the parts thereof whereof the right of entry has not been tolled by an actual adverse possession for a period sufficient to toll the right of entry of this defendant and those under whom this defendant claims.

(6) That prior to the enactment of the "Act relating to Revenue and Taxation" referred to in the plaintiff's petition herein
243 parts of each of said tracts of land described in the plaintiff's petition herein which parts amounted altogether to

the whole or almost the whole of each of said tracts of land were assessed and listed for taxation on or as of the 15th day of September, 1901, the 15th day of September, 1902, the 15th day of September, 1903, the 1st day of September, 1904, and the 1st day of September, 1905, and on or of each of said days, and that taxes charged thereby thereon were prior to said enactment, paid by occupants of parts of the lands so assessed, listed and charged therefor.

(7) That during all said years 1901, 1902, 1903, 1904, and 1905 and for many years prior thereto and ever since and now by the laws of the Commonwealth of Kentucky each of said occupants so paying said taxes on said parts of each of said tracts immediately upon payment thereof became subrogated to the claim of said Commonwealth against the true owners of said lands for the amount of such taxes so paid and interest thereon and each of said occupants immediately thereupon acquired a lien on said land against said true owners, to wit: those under whom this defendant claims and this defendant, for the amount of such taxes so paid and interest and that no taxes are due nor any further taxes by lawfully charged as of said years or any day therein against said lands
244 nor against this defendant or those under whom this defendant claims;

(8) That the provisions of said Article III of said Act referred to in plaintiff's petition herein violates section 10 of Article 1 of the Constitution of the United States which declares that no State shall pass any bill of Attainder or ex post facto law;

(9) That said provisions of said Article III of said Act violate the provisions of the Compact between the Commonwealth of Virginia and the Commonwealth of Kentucky of December 18, 1789 which provides that all private rights and interests of lands within the Commonwealth of Kentucky derived from the laws of Virginia prior to the separation of Kentucky from Virginia shall remain valid and secure under the laws of the State of Kentucky and shall be determined by the laws existing on the 18th day of December, 1789, in the State of Virginia.

(10) That said provisions of said Article III of said Revenue Act violate Section 10 of Article 1 of the Constitution of the United States which provides that no state shall pass any law impairing the obligation of contracts;

(11) That said provisions of said Article III of said Act violate the fourteenth amendment of the Constitution of the United States which provides that no state shall deprive any person of
245 property without due process of law, nor deny to any person within the jurisdiction the equal protection of the laws;

(12) That irrespective of the invalidity of said provisions of Article III of said Act, this suit by the plaintiff herein against this defendant violates the aforesaid Sections, Articles and Amendments of the Constitution of the United States because this defendant has complied with any and all (if any) of the provisions of said Revenue Act that are valid so far as the same are applicable to this defendant if any of said provisions are valid with respect to this defendant; and this defendant has been guilty of no wrong and has not done or omitted to do any act which would forfeit this defend-

ant's title or claim to any of said lands even if said provisions of said Article III of said Revenue Act were valid.

And this defendant relies upon the provisions and declarations of each of said sections, Articles and amendments of said constitution of the United States as defense herein.

Wherefore, this defendant prays as in the original Answer and Cross-Petition and for all general, proper and equitable relief.

THOMAS H. HARMAN,
WM. JACKSON HENDRICK,
For Defendants.

246 STATE OF NEW YORK,
County of New York, sct:

The affiant Samuel Howland Hoppin says that he is the President of Eastern Kentucky Coal Lands Corporation and that the statements contained in the foregoing amended answer and Cross-Petition are true as he believes.

SAMUEL HOWLAND HOPPIN.

Sworn to before me this 29 day of January, 1908.
[SEAL] A. L. HAYES,
Notary Public, New York County, N. Y.

Tendered and offered to file this Feb. 14th, 1908.
J. B. POLLEY, *Clk.*

Pike Circuit Court.

COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
EASTERN KENTUCKY COAL LANDS CORPORATION and CHARLES B. HILLHOUSE & OTHERS, Defendants.

Amended Answer and Cross-Petition of Eastern Ky. Coal Lands Corporation.

247 Now comes the defendant, Charles B. Hillhouse and amends his answer and Cross-petition filed herein, and for amendment he refers to and adopts as his amended answer and Cross-Petition of Eastern Kentucky Lands Corporation this day verified.

Wherefore, defendants prays as in said answer and Cross Petition, and for all proper general and equitable relief.

THOMAS H. HARMAN,
WM. JACKSON HENDRICK,
For Defendant.

STATE OF NEW YORK,
County of New York, sct:

Charles B. Hillhouse says that he is a resident of the state, county and city of New York, and that the statements contained in the foregoing amended answer and Cross-Petition are true as he believes.

CHARLES B. HILLHOUSE.

Sworn to before me this 29th day of January, 1908.

A. L. HAYES,
Notary Public, New York County, N. Y.

Tendered and offered to be filed this Feb. 14, 1908.
J. B. POLLEY, *Clk.*

248 Pike Circuit Court, Feb. Term, 14th Day of Feb., 1908.

COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
EASTERN KENTUCKY COAL LANDS CORPORATION & ETC., Defendants.

Order Filing Exceptions.

The plaintiff filed written exceptions to the evidence of defendants, Eastern Kentucky Coal Lands Corporation and Charles B. Hillhouse, upon cross-examination was plaintiff's witnesses, except insofar as said cross-examination was directed to the listing or failure to list as of dates September 15th, 1901, September 15th, 1902, September 15th, 1903, September 1st, 1904, and September 1st, 1905, and except as directed to the payment or failure to pay the taxes as of said dates.

Upon consideration whereof the court sustains said exceptions and defendants, Eastern Kentucky Coal Lands Corporation and Charles B. Hillhouse, except.

The defendants, Eastern Kentucky Coal Lands Corporation and Charles B. Hillhouse, filed written exceptions to the depositions of plaintiff's witnesses except in so far as they are directed to
249 the listing or failure to list as of dates September 15th, 1901, September 15th, 1902, September 15th, 1903, September 1st, 1904, and September 1st, 1905, and except as directed to the payment or failure to pay taxes as of said dates.

Upon consideration whereof the court sustains said exceptions, and plaintiff excepts.

Pike Circuit Court.

COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
EASTERN KENTUCKY COAL LANDS CORPORATION & ETC., Defendants.

Exceptions.

Plaintiff excepts to all the answers and questions thereto of defendants Eastern Kentucky Coal Lands Corporation and Charles B. Hillhouse, upon cross-examination of each and all of plaintiff's witnesses, except in so far as they are directed to the listing or the failure to list the lands described in the petition as of the 15th day of September, 1901, the 15th day of September, 1902, the 15th day of

September, 1903, the 1st day of September, 1904, and the
250 1st day of September, 1905, and except where directed to the payment or failure to pay taxes assessable thereupon as of said dates.

COMMONWEALTH OF KENTUCKY,
By J. F. BUTLER,
Commonwealth's Attorney.

Filed Feb. 14th, 1908.
J. B. POLLEY, *Clk.*

Pike Circuit Court.

COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
EASTERN KENTUCKY COAL LANDS CORPORATION & ETC., Defendants.

Exceptions of Defendants.

The defendants, Eastern Kentucky Coal and Lands Corporation and Charles B. Hillhouse, excepts to the depositions of each and all of the witnesses for the plaintiff except in so far as they are directed to the listing or the failure to list the lands described in the petition as of September 15th, 1901, September 15th, 1902, September
251 15th, 1903, September 1st, 1904, and September 1st, 1905, or directed to the payment or failure to pay taxes assessable as of said dates.

EASTERN KENTUCKY COAL LANDS
CORPORATION AND
CHARLES B. HILLHOUSE,
By THOS. H. HARMAN, *Attorney.*

Filed Feb. 14th, 1908.
J. B. POLLEY, *Clk.*

Pike Circuit Court. Feb. Term, 14th Day Feb., 1908.

Equity.

COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
EASTERN KY. COAL LANDS CORPORATION, Defendant.

This cause having been submitted on demurrer to the answer of J. C. Twyman, and the Court being advised, sustained the demurrer, and said Twyman excepts, and the said defendant failing to plead further it is adjudged the allegations of the petition be taken for confessed as true as against said J. C. Twyman.

252 The Commonwealth of Kentucky, Pike Circuit Court.

COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
EASTERN KENTUCKY COAL LANDS CORPORATION, ETC., Defendants.

Notice to Take Depositions.

The Eastern Kentucky Coal Lands Corporation and Charles B. Hillhouse and T. H. Harman, their attorney, and the unknown and non-resident defendant and A. E. Auxier their attorney, will take notice that on the 8th day of January, 1908, at the Auditor's office in Frankfort, in the County of Franklin, State of Kentucky, the plaintiff will proceed to take deposition of John R. Thomas to be read as evidence upon the trial of the above styled action. The taking of same will be continued from day to day, Sundays excepted, until finished.

This the 6th day of January, 1908.

COMMONWEALTH OF KENTUCKY,
By Attorney.

Executed the within notice on Eastern Kentucky Coal Lands Corporation and Charles B. Hillhouse by delivering a true copy
253 thereof to T. H. Harman, their attorney; and executed on the unknown and non-resident defendants by delivering a true copy thereof to A. E. Auxier, their attorney, this 6th day of January, 1908.

J. A. SCOTT, *S. P. C.*
By DAN SYCK, *D. S.*

Pike Circuit Court.

COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
EASTERN KENTUCKY COAL LAND CORPORATION & OTHERS, Defendants

Depositions for Plaintiff.

The deposition of J. R. Thomas, taken at the Auditor's office in Frankfort, Franklin County, Kentucky, on the 8th day of January, 1908, pursuant to notice hereto annexed, to be read as evidence on behalf of plaintiff in an action pending in the Pike Circuit Court, in the State of Kentucky, wherein the Commonwealth of Kentucky is plaintiff, and the Eastern Kentucky Coal Lands Corporation and Charles B. Hillhouse and others are defendants

254 The witness being of lawful age, and by me first duly sworn deposes and says:

Direct examination by J. W. M. STEWART:

Q. Please state your age, residence and occupation?
A. I am fifty-two years of age; I am Clerk in the Land Depart-

ment in the Auditor's office in the State of Kentucky, at Frankfort.

Q. As such Clerk in the Auditor's office, are you active in the performance of the duties of the position, and do you have the custody of and access *of* the records of the Land Office of the State of Kentucky?

A. I do have custody of and access to the records in the Land Department of the Auditor's office.

Q. Do you also have access to and custody of the records of the Auditor's where the books of forfeiture and relinquent books and books entitled "Receipts," non-residents by register and other books, showing the listing of lands by non-residents and forfeiture of lands for non-payment of taxes and the payment of taxes?

A. I do have access to all those books, but they were not kept in the same room with the old grants and surveys.

Q. Were and are they kept in the same building?

255 A. They were and are kept in the same building.

Q. Have you recently and while you were such Clerk, did you make examination of these records and books and papers filed in the Auditor's office with a view of ascertaining what lands, if any had been listed for taxation in said office and taxes thereon paid and forfeiture for the non-payment of taxes?

A. I have.

Q. Are those records and papers subject to your control as such Clerk, and do you as such clerk, have access thereto?

A. Yes sir.

Q. Please examine the 22 x copies of patents and survey filed as exhibits and numbered consecutively from 1 to 22, with plaintiff's petition and say whether or not from the examination you made of the records, books and files mentioned above, you were able to find that the lands described in said patents and survey or either of them had been listed for taxation by the patentees of the respective patents, or either of them, or by any other person claiming by, through, or under them, or were taxes paid by them or any of them since the year 1824?

A. I failed to find any lands listed for taxation or sold

256 for non-payment, except in one case, which was a letter dated November 8th, 1825. The letter read as follows:

"The Auditor of public accounts will enter the following land for taxation in my name; I having purchased the same at the register sale of non-resident land for taxes in 1820 for the year of 1819. 20,000 acres, third rate, Mason County, on waters of Sandy, mouth of Craigs Creek, valued 10 cents per acre. Taxes due 1820 to 1824. J. C. Weasel." I am referring to since 1824.

Q. Can you state whether or not the land referred to in said letter is situated in Floyd or Pike County, Kentucky?

A. I cannot tell what County it is in.

Q. Is there anything that identifies it as being a part of the land described in the exhibits filed with the plaintiff's petition?

A. There is not.

Q. From, and to what period of time did this investigation cover?

A. Commencing *d*ome day before the year 1800 and on up to three or four months ago, when I made the examination.

Q. If I understand you then, you examined the records in
257 the Auditor's office, bearing upon the question of the listing of non-resident's lands for taxation and the payment of taxes thereupon and forfeiture for the non-payment of taxes thereupon commencing sometime prior to the year 1800 and down to three or four months ago, and in that examination you examined to see whether or not the lands referred to in the 22 exhibits, filed with the plaintiff's petition, or any of them had been listed for taxation or the taxes thereupon paid by the several patentees or by any person el*s*e, claiming by, through, or under them, or any other person, or whether or not there had been a forfeiture for the non-payment of taxes thereupon? Is that correct?

A. Yes sir, it is.

A. From that examination are you able to state, and if so please state whether or not the said records discloses or show that the lands described in said exhibits, or any of them, were listed for taxation or taxes on them or any of them paid by any person whomsoever at any time subsequent to the year, 1825, and if you are able to state whether or not any of said lands described in said exhibits were listed for taxation in the name of or any taxes thereupon paid by the grantees named in the petition or any of them, or any other person subsequent to the year, 1825?

258 A. My examination disclosed the fact that while some of these lands had been listed for taxation and upon some of them taxes had been paid prior to the year, 1825, none of them have been listed for taxation since the year, 1825, and no taxes have been paid upon them or any of them by any person whomsoever since the year, 1825.

Q. Then please state whether or not the records in the Auditor's office discloses that the lands referred to in the 22 exhibits filed with plaintiff's petition or any part thereof or interest therein were listed for taxation or taxes thereupon paid by the grantees named in said several patents or any of them, or any other person after the year 1825?

A. The records do not disclose that they or any of the- or any interest in them has been listed for taxation or taxes thereupon paid by the grantees named in the said several patents or any of them, or by any other person since the year 1925.

Q. Excepting the letter which you read into the records, was the tract of land therein referred to listed for taxation or taxes thereupon paid at any time subsequent to the date of the letter?

A. There is nothing to show it in the records.

259 Q. Prior to the year, 1825, were the lands referred to in the 22 exhibits filed with plaintiff's petition or any of them listed for taxation or sold for taxes or endorsed "Forfeiture for the failure to pay taxes"?

A. Well, some were listed for taxation, and I think all were.

Q. Were these listings for each consecutive year after, say the

year 1900, or were they listed simply at irregular intervals—I mean down to the year 1825?

A. In some cases the land would be listed two or three years consecutively, but in most cases it was listed irregularly.

Q. Did that listing begin as early as 1792?

A. I cannot fix the date absolutely, but it was near that date.

Q. Several of the tracts referred to in the 22 exhibits filed with the petition were sold for taxes prior to the year 1900?

A. Well, they were sold for taxes, but I don't remember the date they were sold, but they were sold prior to 1824.

Q. Please state whether or not the person in whose name the said tracts or any of them were listed for taxation,
260 prior to the year 1825, paid taxes upon them, or were they or not in all such instances sold for non-payment of taxes for forfeited for like non-payment?

A. Well, I see from my notes that some of the parties paid the taxes and other lands sold for non-payment of taxes.

Q. On what date was subpœna executed on you requiring your attendance at this place to testify in this case?

A. No subpœna was executed on me to give my deposition here. I was subpœn-ed to give my deposition in Pikeville next Friday, but as I could not go there, new notices, I am informed were executed to take my deposition here.

Q. When did you make the investigation of the records in your office to which you have just testified?

A. Sometime during the month of September, 1907.

Q. At whose instance and request was this examination made?

A. John J. Johnson.

Q. In what building in Frankfort were your offices located?

A. In what we call the Executive Building.

Q. Is the Land Office Department or the office of the Land Office Department on the first or second floor of the building?
261 A. On the second floor.

Q. Is it not a fact that the Auditor of Kentucky occupies office rooms on the first floor of said building in which there are records kept?

A. The Auditor uses part of the first, second and third floor.

Q. Who was in custody of the records kept on the first floor?

A. Judge Booe was in general charge of the first floor, but each Clerk in the office has custody of the books and papers in connection with his work in that particular department.

Q. I will ask you on which floor the books to which you referred on examination in chief as the "records of the Auditor's office where the books of forfeiture and delinquent books and books entitled "receipts" are kept?

A. The books referred to in my deposition in chief were kept in the vault or basement of the Executive Building. They have been carried there sometime since non-resident lands were listed in the Auditor's office.

Q. Who, if any one, assisted you in making the investigation?

A. John J. Johnson.

Q. Who, if any one, paid for the work in making
262 said investigation?

A. I was paid by John J. Johnson.

And further sayeth not.

JOHN R. THOMAS.

STATE OF KENTUCKY,
County of Franklin, sct:

I, F. K. Eales, Examiner in and for the County and State aforesaid, do certify that the foregoing deposition of John R. Thomas was taken before me at the time and place stated in the caption, that said witness was duly sworn by me before giving same; that it was written by me in his presence, and was read to and subscribed to by him in my presence; that J. W. Stewart was present as counsel representing plaintiff, and that defendant was not present either in person or by attorney.

Given under my hand this 8th day of January, 1908.

F. K. EALES,
Examiner.

Received at Post office, Pikeville, Kentucky, under seal, and filed January 9, 1908.

J. B. POLLEY, *Clerk.*
By A. D. CLINE, *D. C.*

263 The Commonwealth of Kentucky, Pike Circuit Court.

COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
EASTERN KENTUCKY COAL LANDS CORPORATION, ETC., Defendants.

Notice to Take Depositions.

The defendants, Eastern Kentucky Coal Lands Corporation, Charles B. Hillhouse, and T. H. Harman, their attorney, and the unknown absent and non-resident defendants, and A. E. Auxier, their attorney, and J. C. Twyman will take notice that on the 10th day of January, 1908, at the call office of J. M. York in Pikeville in the County of Pike, State of Kentucky, the plaintiff will proceed to take depositions of sundry witnesses to be read as evidence upon the trial of the above styled action. The taking of same will be continued from day to day, Sundays excepted, until finished.

This the 3rd day of January, 1908.

JOHN F. BUTLER,
Com'th Att'y.

THE COMMONWEALTH OF KENTUCKY:

To the Sheriff of Pike County, Greeting:

You are commanded to summon I. B. Sanders to appear at law office of York & Johnson, Pikeville, Ky. on the 10th day
264 of Jan., 1908, to give his deposition in behalf of plaintiff in an action in the Pike Circuit Court between the Common-

wealth of Ky. plaintiff, and Eastern Ky. Coal Lands Corporation, etc., defendants.

Witness J. B. Polley of said Court, this 8th day of Jan., 1908.

J. B. POLLEY, *Clerk.*
By A. D. CLINE, *D. C.*

Executed in full January 8, 1908.

J. A. SCOTT, *S. P. C.*
By L. G. ADKINS, *D. S.*

The depositions of W. J. Keel, Trimble Leslie, L. H. Lawson, Richard Hatcher, I. B. Sanders, George Pinson, Jr., K. F. Keathley, J. A. Scott, H. S. Damron, Will M. Smith, & J.. S. Cline taken before me at the law office of J. M. York, in Pikeville, in the County of Pike, and State of Kentucky, on the 10th day of January, 1908, pursuant to notice hereto attached, to be read as evidence in plaintiff's behalf in an action now pending in the Pike County, Kentucky, Circuit Court, wherein the Commonwealth of Kentucky is plaintiff, and Eastern Kentucky Coal Lands
265 Corporation and others are defendants.

K. F. Keathley.

The Deposition of K. F. Keathley, Taken at the Same Time and Place and for the Purpose Mentioned in the Caption.

The witness being of lawful age and by me first duly sworn, deposes and says:

Direct exaxmination by Mr. J. W. M. STEWART:

Q. Please state your name, age, residence and occupation?

A. My name is K. F. Keathley, I am 46 years of age; live in Pikeville, Kentucky, and at present I am a farmer and timber man.

Q. Were you or not ever Deputy Sheriff of Pike County, and if so, when and under whom?

A. I was Deputy Sheriff under W. M. Smith for the years 1904 and 1905.

Q. When was Mr. Smith elected Sheriff, and how long did he serve?

A. He was elected Sheriff of Pike County at the November election in 1901, and served for the full term of four years, and as such was collector of taxes, both County levy and State Revenue
266 in Pike County for the years 1902, 1903, 1904, and 1905. I was his chief Deputy for the years 1904 and 1905, and during that time I had charge of the books of the office and kept all accounts of payment of taxes.

Q. State whether or not for either of these years any person claiming by, through or under the grantees named in the twenty-two (22) exhibits, filed with plaintiff's petition now here handed you for examination, paid any taxes upon the lands therein described, or any of them?

A. No, sir. No person claiming by, through, or under the grantees named in the twenty-two (22) exhibits, filed with plaintiff's petition, or any of them, paid taxes, either States or County, or other taxes, in Pike County for the years 1904 and 1905, or either of them, upon the lands described in the petition and said exhibits, or any part of them, or any interest in them, or any of them.

Cross-examination by T. H. HARMAN, counsel for corporate defendant Eastern Kentucky Coal Lands Corporation and Charles B. Hillhouse:

Q. You may state whether or not the citizens from whom you collected taxes for the years 1904 and 1905 resided upon the
267 lands described in plaintiff's petition, or the lands embraced in the description given in plaintiff's petition?

A. By far the larger number of citizens who paid taxes to me for the years mentioned lived or resided upon the lands upon which they paid taxes in Pike County. Some citizens of course, owned some land upon which they did — reside and upon which they paid taxes.

Q. Is it not a fact that the citizens in possession and claiming to be in possession and the owners of the lands embraced in the descriptions given in the exhibits with plaintiff's petition, paid taxes thereupon to you for the years above mentioned?

Plaintiff objects.

A. Yes sir, except in a few instances, returned delinquent and probably sold for non-payment of taxes, which relatively speaking, were very small in number.

K. F. KEATHLEY.

268 *George Pinson, Junior.*

Also the Deposition of George Pinson, Junior, Taken at the Same Time and Place and for the Purpose Mentioned in the Caption.

The witness being of lawful age, and by me first duly sworn, deposes and says:

Direct examination by Hon. J. W. M. STEWART:

Q. Please state your name, age, residence and occupation?

A. My name is George Pinson, Jr.; I am 37 years old; live in Pike County, Kentucky, and am a lawyer.

Q. Do you know W. M. Smith, and if so, state whether or not he was ever Sheriff of Pike County, and if so when?

A. I know Mr. Smith; he was Sheriff of Pike County for the years 1902, 1903, 1904, 1905, having been elected at the regular November election, 1901, and qualified in due time as provided by law, and served for his full term.

Q. What connection, if any, did you have with the business of Mr. Smith as Sheriff for the four years?

A. I was the Commissioner or one of them, who made the settlement between him and the County for each of said years,
269 and also settlement between Mr. Smith and his deputies for each of said years; I also made out Mr. Smith's tax books showing the names of each person — whom taxes were assessed for the years 1904 and 1905; was also a member of the Board of Supervisors for the years 1903, 1904, and 1905.

Q. I hand you the petition in this action, attached to which are twenty-two (22) exhibits. Please examine same and state whether or not the persons therein named as grantees, or any of them, or any person claiming by, through, or under them, or any of them, paid any taxes, either State or County, or other taxes in Pike County for the years 1902, 1903, 1904, 1905, or either of them, or any of them, or either or any of them upon the lands described in said petition, and exhibits, or any of them, or any interest in them, or any of them?

(The corporate defendant and C. B. Hillhouse object to the above question and answer thereto.)

A. No sir, no person claiming by, through or under the persons named in said exhibits, or any of them, paid taxes, either State or County, or otherwise, in Pike County, for said years, or any or either of them upon the lands described in the petition and said exhibits or any of them, or any part of them or any of them, or
270 any interest in them or any of them.

And further deponent sayeth not.

GEORGE PINSON, JR.

J. A. Scott.

Also the Deposition of J. A. Scott, Taken at the Same Time and Place and for the Purpose Mentioned in the Caption.

The witness being of lawful age, and first duly sworn by me, deposes and says:

Direct examination by J. W. M. STEWART:

Q. Please state your age and residence?
A. I am 32 years old; reside in Pike county, Kentucky.
Q. What is your occupation?
A. I am Sheriff of Pike County.
Q. When were you elected and qualified as such?
A. I was elected Sheriff of Pike County at the November Election, 1905, and qualified as such at the time provided by the statute, and entered upon the discharge of my duties in January, 1906.

Q. As such Sheriff, was it or not your duty to collect the
271 taxes, both State and County, in Pike County, for the year, 1906, levied and assessible as of the 1st day of September, 1905.

A. Yes sir.

Q. Please examine the 22 exhibits, filed with plaintiff's petition, and state whether or not the grantees named in said several

exhibits or any of them, or any person claiming by, through, or under them, or any of them paid you any taxes as Sheriff of Pike County, levied and assessible as of the 1st day of September, 1905, upon the land described in the petition and the said exhibits, filed with plaintiff's petition, or any of them, or any interest in them or any of them, or any part of them or any of them?

A. No sir; no person claiming by, through or under the patents or survey described in the petition paid me as Sheriff of Pike County, or otherwise, any taxes whatever, levied as of September 1st, 1905, upon the lands described in said petition and exhibits, or any of them, or any part of them, or any interest in them, and no person paid any such taxes thereupon for the year 1906, and no person paid any such taxes thereupon for the year 1907 for which I was likewise Sheriff of Pike County and Collector of taxes therein.

272 Q. Has the Eastern Ky. Coal Lands Corporation or Charles B. Hillhouse paid you any taxes upon the lands described in the petition, or any part of them, or any of them, or any interest in them or any of them, for the years 1906 and 1907?

A. No sir; neither of them has paid me any taxes for said years, or any other year.

Cross-examination by Mr. T. H. HARMAN, Counsel for Eastern Ky. Coal Lands Corporation and Charles B. Hillhouse:

Q. You may state whether or not the citizens from whom you collected taxes for the years 1906 and 1907, resided upon the lands described in plaintiff's petition, or the lands embraced in the descriptions given in plaintiff's petition?

A. By far the larger number of citizens who paid taxes to me for the years mentioned lived or resided upon the lands upon which they paid taxes, in Pike County. Some citizens of course, owned some land upon which they did not reside and upon which they paid taxes.

Q. Is it not a fact that the citizens in possession and claiming to be in possession and the owners of the lands embraced in the

273 descriptions given in the exhibits, filed with plaintiff's petition, paid taxes thereupon to you for the years above mentioned?

Plaintiff objects.

A. Yes, except in a few instances, returned delinquent and probably sold for non-payment of taxes, which relatively speaking, were very small in number.

Q. Is it not a fact that during the year 1907, the defendant, Charles B. Hillhouse, paid to you several hundred dollars in taxes on coal and mineral rights, embraced in the description given in the exhibits filed with plaintiff's petition for the years 1902, 1903, 1904, 1905, 1906 and 1907?

A. Yes sir, he paid me several dollars taxes which were charged against E. Rollins Morse, for the years mentioned and it was paid by Charles B. Hillhouse's check, which was delivered to me by T. H. Harman, his attorney. I understand that these coal and mineral

rights are within the description given in the exhibits filed with plaintiff's petition. The payment of these taxes was made upon some five or six thousand acres of mineral rights that had been defaulted in the payment of taxes, but which under a proceeding filed in Pike Circuit Court, under Act of March 15th, 1906, in the name of E. Rollins Morse, was assessed for the 5 years named as
274 against E. Rollins Morse, and it was these taxes they were paying. The title to this mineral interest was originally in the Virginia Mining and Improvement Company; they having acquired same by mesne conveyances from the citizens who claimed to be the owners of the same, under title other than the grants referred to in plaintiff's petition, and which title by successive conveyances or devises finally came vested, as I am advised, in E. Rollins Morse.

And further deponent sayeth not.

J. A. SCOTT.

W. J. Keel.

Also the Deposition of W. J. Keel, Taken at the Same Time and Place and for the Purpose Mentioned in the Caption.

The witness by me first duly sworn deposes, and says:

Direct examination by Mr. J. W. M. STEWART:

Q. Please state your name, age, residence and present oc-
275 cupation?

A. My name is W. J. Keel, and my age is 47 years old; I live in Pikeville, Kentucky, and am at present a merchant.

Q. Were you ever Sheriff of Pike County?

A. Yes, sir.

Q. When were you elected and how long did you serve?

A. I was elected Sheriff of Pike County at the November election, 1897, and qualified in January, 1898. I served as such Sheriff under said election during the years 1898, 1899, 1900 and 1901.

Q. During the time were you collector of state, revenue and County levy for Pike County?

A. Yes sir, for each of said years.

Q. Please examine the 22 exhibits filed with plaintiff's petition herein, and state whether or not the persons named in these patents and survey or any person claiming by, through or under them, or any of them, paid you any taxes for the years, or any of said years, for which you were Sheriff of Pike County, either State, revenue or county levy or other taxes upon the lands described in said petition and exhibits or any of them, or any part of them, or any interest in them or any of them?

276 (Objected to by counsel for Corporate defendants and C. B. Hillhouse.)

A. No sir, no person claiming by, through or under the patents and survey referred to, or any of them, ever paid me any taxes of

any kind whatever, for the years 1898, 1899, 1900 or 1901, or any other years upon the lands described in said patents and survey or any of them or any part of them or any interest in them or any of them.

And further deponent sayeth not.

W. J. KEEL.

Trimble Leslie.

Also the Deposition of Trimble Leslie, Taken at the Same Time and Place and for the Purpose Mentioned in the Caption.

The witness being of lawful age, and first duly sworn by me, deposes and says:

Direct examination by Hon. J. W. M. STEWART:

Q. Please state your name, age, residence and occupation?

A. My name is Trimble Leslie; I am 39 years old; I live in Pike County, Kentucky, and am a farmer.

277 Q. Were you ever Sheriff of Pike County?

A. Yes sir.

Q. For what year were you Sheriff, and during that year were you not collector of taxes, both state and County levy?

A. I was Sheriff of Pike County for the year 1897, and for that year collected of taxes, both state and revenue and County levy in Pike County.

Q. Please examine the exhibits filed with Plaintiff's petition numbered from one to twenty-two, and state whether or not any person named as grantee therein, or any person claiming by, through or under them or any of them, paid you any taxes, either state, revenue or county levy for the year 1897, or any other year, upon the lands described in said petition and exhibits, or any of them, or any part of them?

(Objected to by counsel for Corporate defendants and Charles B. Hillhouse.)

A. No sir; no payment of taxes was ever made to me upon the lands described in those exhibits, or any of them, by any person named as grantee in said exhibits, or any person claiming by through, or under them or any of them.

And further deponent sayeth not.

TRIMBLE LESLIE.

278 *L. H. Lawson.*

Also the Deposition of L. H. Lawson, Taken at the Same Time and Place and for the Purpose Mentioned in the Caption.

The witness being of lawful age, and by me first duly sworn, deposes and says:

Direct examination by Hon. J. W. M. STEWART:

Q. State your name, age, residence and occupation?

A. My name is L. H. Lawson; I am 36 years old; live at Williamson, West Virginia, and am a farmer and timber man.

Q. Were you ever Sheriff of Pike County?

A. Yes sir.

Q. For what years were you Sheriff, and during those years were you collector of taxes, both State, revenue and County levy?

A. I was Sheriff during the years 1895, and 1896, and for those years was collector of taxes, both state, and revenue and county levy in Pike County.

Q. Please examine the exhibits filed with plaintiff's petition, numbered from one to twenty-two inclusive, and state whether or not any person named as grantee therein, or any person
279 claiming by, through or under them, or any of them, paid you any taxes, either state, revenue or County levy, for the years, 1895 and 1896, or any other year, upon the lands described in said exhibits, or any of them or any part of them?

(Objected to by Counsel for corporate defendants and Charles B. Hillhouse.)

A. No sir; no payment of taxes was ever made to me upon the lands described in those exhibits, or any of them, by any person named as grantee in said exhibits, or any person claiming by, through or under them or any of them.

And further deponent sayeth not.

L. H. LAWSON.

R. Hatcher.

Also the Deposition of R. Hatcher, Taken at the Same Time and Place and for the Purpose Mentioned in the Caption.

The witness being of lawful age, and first duly sworn by me, deposes and says:

Direct examination by Hon. J. W. M. STEWART:

Q. Please state your name, residence, age and occupation?
280 A. My name is R. Hatcher; I am 45 years of age; I live in Pikeville, Kentucky, and am Manager of the Pikeville Hotel.

Q. Were you ever Sheriff of Pike County?

A. Yes sir.

Q. For what year were you Sheriff, and during that year were you collector of taxes, both state and County levy?

A. I was Sheriff of Pike County for the year 1894, and for that year was collector of taxes, both state, revenue and county levy, in Pike County.

Q. Please examine the exhibits filed with plaintiff's petition, numbered from one to twenty-two, and state whether or not any person named as grantee therein, or any person claiming by, through, or under them or any of them, paid you any taxes, either state, revenue or county levy, for the year 1894, or any other year, upon the lands described in said exhibits, or any part of them, or any part of them?

(Objected to by counsel for corporate defendant and Charles B. Hillhouse.)

A. No sir; no payment of taxes was ever made to me upon the lands described in those exhibits, or any of them, by any person named as grantee in said exhibits, or any person claiming by,
281 through or under them or any of them.

And further deponent sayeth not.

RICHARD HATCHER.

I. B. Sanders.

Also the Deposition of I. B. Sanders, Taken at the Same Time and Place and for the Purpose Mentioned in the Caption.

The witness being of lawful age, and by me first duly sworn, testifies as follows:

Direct examination by Hon. J. W. M. STEWART:

Q. Please state your name, age, residence and occupation?

A. My name is I. B. Sanders; I am 50 years of age; I live in Pike County, and am a farmer.

Q. Were you ever Sheriff of Pike County?

A. Yes sir.

Q. For what year were you Sheriff, and during that year were you collector of taxes, both state, revenue and county
282 levy?

A. I was Sheriff of Pike County for the year 1891, and for that year was collector of taxes, both state, revenue and County levy in Pike County.

Q. Please examine the exhibits filed with plaintiff's petition, numbered from one to twenty-two, and state whether or not any person named as grantee therein, or any person claiming by, through, or under them, or any of them, paid you any taxes, either state revenue or county levy -or the year 1891, or any other year, upon the lands described in said exhibits or any of them, or any parts of them?

(Objected to by counsel for corporate defendants and Charles B. Hillhouse.)

A. No sir; no payment of taxes was ever made to me upon the lands described in the exhibits or any of them by any person named as grantee in said exhibits, or any person claiming by, through or under them or any of them.

And further deponent sayeth not.

I. B. SANDERS.

283 *H. S. Damron.*

Also the Deposition of H. S. Damron, Taken at the Same Time and Place and for the Purpose Mentioned in the Caption.

The witness being of lawful age, and by me first duly sworn, testifies as follows:

Direct examination by J. W. M. STEWART:

Q. Please state your name, age, residence, and occupation?

A. H. S. Damron; 42 years old; live in Pikeville, Kentucky, and am Deputy Clerk of the Pike County Court.

Q. Under whom are you deputy, and who is Clerk of the Pike County Court, when was he elected and when did he enter upon the discharge of his duties?

A. I am deputy under Mr. W. B. Taylor; he is Clerk of the Pike County Court, and was elected at the regular November election 1905, and qualified and entered upon the discharge of his duties as such Clerk in January, 1906.

Q. Please state whether or not as Deputy Clerk of the Pike County Court, you are the custodian and have the custody of records, and particularly the records of deeds, mortgages, descriptions lists of lands owned by non-residents, other transfers of real-estate
284 and assessor's books of said County, and records of lands listed for taxation and sold for non-payment of taxes?

A. Yes sir, I have custody of all the records of the Pike County Court that are now in that office, from the formation of the County, which records show, among other things the transfers of real-estate by deeds, wills and other instruments, placing of liens thereupon by mortgages and otherwise, and the Assessor's books for the various years, showing the property that has been listed for taxation, also the lists filed by non-residents of property owned or claimed by them for the purpose of taxation, as well as the records showing the sale of lands for the non-payment of taxes, and all other records, which by law are required to be kept in the County Clerk's office, including the orders and records of the County Court.

Q. I hand you the petition filed in the Pike Circuit Court in case therein pending, of the Commonwealth of Kentucky against Eastern Kentucky Coal Lands Corporation and others now pending therein, together with the twenty-two (22) exhibits thereto attached, and will ask you to examine the same, and the properties described in said petition and exhibits, and the grantees therein named,
285 and will ask you to state whether or not you have lately examined the records of your office to ascertain whether or

not there has been any transfers recorded of the properties described in said petition and exhibits, and if so, state what they were and have been?

A. I have made such examination, and the records of the Clerk's office of the Pike County Court discloses the fact that except, as I will state later, the only transfers of record of the properties described in the petition and exhibits or any of them, are set forth in the petition, which I refer to as a part of my deposition.

In addition to those set forth in the petition there are a few other transfers—not exceeding ten—effecting the properties described in the petition, or some of them.

These ten transfers are transfers by intermediate holders who, after deeds were made to them, conveyed away by regularly executed deeds the same property, leaving only those set forth in the petition as the transfers from whom there are no record conveyance.

Q. Please state whether or not you have likewise made examination of the Assessor's books, descriptive lists, orders of the
286 County Court and other records showing the listing of lands for taxation in Pike County?

A. Yes sir; I have just completed the examination of all the records of Pike County bearing upon the question of the listing of property for taxation in Pike County, making special examination of all the Assessor's books, descriptive lists filed by non-residents, orders of the County Court listing omitted property. I made a thorough examination of the records in all places where property listed for taxation in any manner or otherwise, by law, should be shown.

Q. What was the special purpose of the examination that you made?

A. The object of the examination and search was to ascertain whether or not the lands described in the petition and exhibits filed therewith, in the case above referred to of the Commonwealth of Kentucky against Eastern Kentucky Coal Lands Corporation, C. B. Hillhouse, and others, pending in the Pike Circuit Court had been listed for taxation or sold for non-payment of taxes in Pike County by the persons named as grantees of said patents or surveyor by persons named as grantors or grantees in the deeds referred to, or by any person claiming by, through or under them, or any of them, either the grantees in said patents or survey, or the grantors
287 or *or* grantees in said deeds, or any of them.

Q. When was this examination made?

A. I have been making the examination for a month or more last passed; completed it within the last four or five days.

Q. Now please state whether or not the lands described in the said petition and exhibits, or any of them, or any part of them, or interest in them has ever been listed for taxation in Pike County, Kentucky, or sold for non-payment of taxes by either the grantees named in said patents or any of them, or any person claiming by, through or under them, or by the grantors or grantees in the deeds to which you have referred?

A. I find the following properties listed for taxation in the names respectively stated, and for the years respectively stated, and which

are for some of the properties mentioned in some of the exhibits filed with the petition, to wit:

"1892, Lucien Birdseys, 70,000 acres;

1890, 1891, 1892, 1893, and 1894 Union Trust Company, 105,000 acres.

The Union Trust Company as hereinbefore stated by reference to the petition, had conveyances for several tracts of land, a
288 few of which were for some of the tracts described in the petition and exhibits, but more of it was for other large grants not described in said petition and exhibits. There was simply listed in its name 105,000 acres, and I have no way of telling whether this 105,000 acres was intended to refer to the lands described in the plaintiff petition or to other lands that had been deeded to the Union Trust Company.

1898, W. M. Woodruff, 60,000 acres and 10,000 acres.

1882 to 1891, Lucien Birdseys, listed on the County Court order book 70,000 acres, listed by order of County Court on the 27th day of March, 1893.

With these exceptions no part of the lands described in the petition and exhibits has been listed for taxation for any year whatever, by either the grantees named in several patents or survey by survey or any of them, nor by any person claiming by, through or under them; nor by either the grantors or grantees in the deeds referred to.

Q. Then if I understand you no part of the land described in the petition, and exhibits has ever been listed for taxation in Pike County, Kentucky by either of the grantees named in said patents or any of them, or by any person claiming by, through or
289 under them, or any of them except the ones that you have just stated, is that correct?

A. That is correct, and what is shown by the record in the Pike County Clerk's office.

Q. Please state whether or not either grantees named in said patents or any of them, or any person claiming by, through or under them has ever paid any taxes in Pike County upon the lands described in the petition and exhibits or any part thereof, or any interest therein?

A. No sir, no person claiming by, through or under the grantees named in said patent or any of them has ever paid any taxes in Pike County upon said lands or any part thereof or any interest therein, and as stated the only time any part of it has ever been listed by any person claiming under said patents was as I have stated, and no taxes were paid for the years when listed by the persons I have named for each of said listings the property was sold for the nonpayment of taxes and has never been redeemed.

Q. Please state whether or not Lucien Birdseys, Union Trust Company or W. M. Woodruff or any of them paid any taxes upon the property listed in their respective names, and for the years
290 respectively stated by you in answer to question hereinbefore asked?

A. No sir, none of them paid any taxes upon the properties assessed in their names for the years stated, but the properties were

sold for each and all years for the non-payment of taxes and purchased by the Commonwealth in each case and none of it has been redeemed.

Q. Please state whether or not any person claiming by, through or under the patents referred to in the petition and exhibits listed the land therein described or any part thereof, or any interest therein for taxation in Pike County as of the 15th day of September, 1901, 15th day of September, 1902, 15th day of September, 1903, the 1st day of September, 1904, 1st day of September, 1905 or as of any of said dates or has paid any taxes upon said property or any part thereof levied and assessable as of said dates or either of them or any of them?

A. Neither the land described in said petition and exhibits nor any part thereof, nor any interest therein was listed for taxation as of any of said dates by any of the grantees named in said several patents, nor by any of them, nor by any person claiming by, through or under them, or any of them, and none of said patents nor
291 any person claiming by, through or under them paid any tax in Pike County, Kentucky upon said lands or any part of them, or any interest in them levied and assessible as of said dates or any of them.

Q. Has either the Eastern Kentucky Coal Lands Corporation or Charles B. Hillhouse listed for taxation or lands in Pike County, Kentucky or any interest in them as of September 15, 1901, September 15, 1902 September 15, 1903, September 1, 1904, September 1, 1905, or paid any taxes upon the lands therein for said years or any of them?

A. No sir, neither of the said parties named listed for taxation any real-estate in Pike County, Kentucky for said years as of said dates, or any of them and either of the persons named paid any taxes in Pike County, Kentucky for said years or either of them.

And further the deponent sayeth not.

H. S. DAMRON.

There not being time to complete the taking of these depositions the further taking of the same is adjourned until tomorrow morning at 8 o'clock, January 11, 1908.

J. J. MOORE,
Ex. of Pike County, Ky.

292 Met pursuant to adjournment on Saturday, January 11, 1908, at 8 o'clock A. M., and resume the taking of the depositions herein.

J. J. MOORE,
Ex. for Pike County, Kentucky.

W. M. Smith.

Also the Deposition of William M. Smith, Taken at the Same Time and Place and for the Purpose Stated in the Caption.

The witness being of lawful age, and by me first duly sworn, deposes and says:

Direct examination by Mr. J. W. M. STEWART:

Q. State your age and residence?

A. I am 41 years old, and reside in Pike County, Kentucky.

Q. Please state whether or not you were at any time elected, qualified and performed the duties of the office of sheriff in Pike county and if so, when?

A. I was elected sheriff at the November election in the year
293 1901, and in due time as provided by law qualified as such sheriff and entered upon my duties as such and served the full term of four years, 1902, 1903, 1904, and 1905.

Q. State whether or not during said four years you were collector of taxes, state and county, in the county of Pike, levied and assessable as of date the 15th day of September, 1901, the 15th day of September, 1902, the 15th day of September, 1903, 1st day of September, 1904, and 1st day of September, 1905?

A. I was.

Q. During that time did any of the persons named as grantees in several patents and surveys, described in the petition and copies filed as exhibits with plaintiff's petition now here handed you for examination—did any persons claiming by, through or under them or any of them pay any taxes to you assessed against or on any of the land mentioned in said exhibits for said years or any of them?

A. No sir.

Q. Did any person claiming by, through or under the 22 patents and survey described in the petition copies of which are filed with plaintiff's petition pay any taxes to you upon the land de-
294 scribed in the petition and said exhibits or any of them for the said years, 1902, 1903, 1904, and 1905, or any of said dates, levied and assessable as of the dates above mentioned or any of them?

A. No sir, no person claiming by, through or under the patents and survey named or any of them, paid to me as the sheriff of Pike County, or otherwise, any taxes upon the land described in said petition and exhibits or any of them or any part of them, or any of them, for any of the years named during which I was sheriff of Pike County and as such collector of the state and county taxes therein, and no taxes were paid to me as such sheriff for the said years or any of them upon said lands or any part of them, or any interest in them, or any of them by any person claiming by, through or under the patents any survey described in the petition and said exhibits.

Q. Did the defendants, Eastern Kentucky Coal Lands Corporation or Charles B. Hillhouse, or either of them pay you any taxes

upon the lands described in the petition, or any part of them, or any of them or upon any other lands under any claim whatsoever, for the years 1902, 1903, 1904, and 1905, or any other year?

A. No sir.

295 Cross-examination by Mr. T. H. HARMAN, Counsel for the Defendants, Eastern Ky. Coal Lands Corporation and Charles B. Hillhouse:

Q. You may state whether or not the citizens from whom you collected taxes for the years 1902, 1903, 1904, and 1905, resided upon the lands described in plaintiff's petition or the lands embraced in the descriptions given in plaintiff's petition?

A. By far the larger number of citizens who paid taxes to me for the years mentioned lived or resided upon the lands upon which they paid taxes in Pike County. Some citizens of course owned some land — which they did not reside and upon which they paid taxes.

Q. Is it not a fact that the citizens in possession and claiming to be in possession and the owners of the lands embraced in the descriptions given in the exhibits filed with plaintiff's petition paid taxes thereupon to you for the years above mentioned?

Plaintiff objects.

A. Yes sir, except in a few instances returned delinquent and probably sold for non-payment of taxes which relatively speaking were very small in number.

WIL. M. SMITH.

296 *J. S. Cline.*

Also the Deposition of J. S. Cline, Taken at the Same Time and Place and for the Purpose Mentioned in the Caption.

Direct examination by Hon. J. W. M. STEWART:

The witness, being of lawful age, and first duly sworn by me, deposes and says:

Q. Please state your name, age, residence and occupation?

A. My name is J. S. Cline; I am 38 years of age, I live in Pike county, Kentucky, and am a lawyer.

Q. Were you ever sheriff of Pike county?

A. Yes sir.

Q. For what years were you sheriff, and during those years were you not collector of taxes, both state, revenue and county levy.

A. I was sheriff of Pike county for the years 1892 and 1893, and was collector of taxes for those years both state and revenue and county levy, in Pike county.

Q. Please examine the exhibits filed with plaintiff's petition, numbered from one to twenty-two, and state whether or not any person named as grantee therein, or any person claiming by, through or under them or any of them, *paid* you any taxes either state revenue

or county levy for the year 1892 or 1893, or any other
297 year, upon the said lands described in said petition — exhibits or any of them, or any part of them?

(Objected to by counsel for corporate defendants and Charles B. Hillhouse.)

A. No sir, no payment of taxes was ever made to me upon the lands described in the petition and those exhibits, or any of them by any person named as grantee in said exhibit or any person claiming by, through or under them or any of them.

Q. Do you know William Smith and if so, was he ever sheriff of Pike County?

A. Yes sir, I know Mr. Smith. He was Sheriff of Pike County for the years 1902, 1903, 1904, and 1905, under election held at the November election, 1901, and served for the full term of four years.

Q. State whether or not you were Deputy Sheriff under Mr. Smith, and if so, for what years?

A. I was Mr. Smith's deputy and book-keeper for the years 1902, and 1903, and as such had general charge of his collections. Mr. Smith depended upon me to see to the collections, keeping his books straight and attending to the general business of the office for these two years.

Q. State whether or not — the years 1902 and 1903, or
298 either of them, any person claiming by, through or under the grantees named in the exhibits filed with plaintiff's petition, or any of them, paid any taxes upon the land described in the exhibits, or any of them or any part of them?

A. No sir; no person claiming by, through or under the grantees named in the several exhibits or any of them paid any taxes for either of said years upon the lands described in the exhibits or any of them, or any part of said lands or any interests in them.

Cross-examination by T. H. HARMAN, Counsel for Eastern Ky. Coal Lands Corporation & Chas. B. Hillhouse:

Q. You may state whether or not the citizens from whom you collected taxes for the years 1902 and 1903 resided upon the lands described in plaintiff's petition, or the lands embraced in the description given in plaintiff's petition?

A. By far the larger number of citizens who paid taxes to me for the years mentioned, lived or resided upon the lands upon which they paid taxes in Pike County. Some citizens, of course, owned some land upon which they did not reside and upon which they paid taxes?

Q. Is it not a fact that the citizens in possession and claim-
299 ing to be in possession and the owners of the lands embraced in the descriptions given in the exhibits, filed with plaintiff's petition, paid taxes thereupon to you for the years above mentioned?

(Plaintiff objects.)

A. Yes sir; except in a few instances, returned delinquent or

probably sold for non-payment of taxes which relatively speaking were very small in number.

And further deponent sayeth not.

J. S. CLINE.

STATE OF KENTUCKY,
County of Pike, set:

I, J. J. Moore, examiner in and for the County and State aforesaid, certify that the foregoing depositions of W. J. Keel, Trimble Leslie, L. H. Lawson, Richard Hatcher, I. B. Sanders, George Pinson, Jr., K. F. Keathley, H. S. Damron, J. A. Scott, Will M. Smith and J. S. Cline were taken before me at the times and place *and* stated in the caption, and adjourning orders; that said witnesses were, and each was, duly sworn by me before giving their respective depositions; that said depositions were written by me in the presence
300 of the witnesses giving them and read to and subscribed by each witness in my presence. T. H. Harman, attorney for defendants Eastern Kentucky Coal Lands Corporation and C. B. Hillhouse, and J. M. York and J. W. M. Stewart, attorneys for plaintiff, and A. E. Auxier, attorney for the non-resident defendants, *was* present; that no other attorney or agent was present representing either party and that no defendant was present in person.

Given under my hand this the 11th day of January, 1908.

J. J. MOORE,
Examiner in and for Pike Co., Ky.

Received of J. J. Moore, Examiner of Pike county, Ky. and filed Jan. 13, 1908.

J. B. POLLEY, *Clerk*,
By A. D. CLINE, *D. C.*

Pike Circuit Court.

COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
EASTERN KENTUCKY COAL LANDS CORPORATION & C. B. HILLHOUSE, ETC., Defendants.

Instructions.

301 I. If the jury believe and find from the evidence that the defendants, and those by, through and under whom they claim or any of them have failed to list for assessment and taxation the lands described in the petition and exhibits, and further described in the patents and survey read to the jury, as of the 15th day of September, 1901, 15th day of September, 1902, 15th day of September, 1903, the 1st day of September, 1904 and the 1st day of September 1905, or have so failed for any three of said dates, or have failed to pay the taxes charged or which should have been charged against them or those under whom they claim, as the owner or claimant of said land as of said dates or any three of them they will find

for the plaintiff as against said defendants, so failing to list for assessment and taxation or failing to pay the taxes charged or which should have been charged as of said dates, or any three of them, if the jury believe they and those under whom they claim did so fail.

II. If the jury believe and find from the evidence that none of the defendants or any person by, through or under whom they claim listed said land or any part thereof, for assessment and taxation, as of any three of said dates, or that none of them, nor any person by, through or under whom they claim, paid the taxes charged or
302 which should have been charged against them, respectively, or those under whom they claim, as of said dates or any three of them, the jury will then find for the plaintiff as against all the defendants.

III. If the jury does believe and find for the plaintiff under instructions No. I or II, they will find for the defendant.

We, the jury agree and find for the plaintiff, and against all the defendants.

M. C. THORNBURY,
One of the Jury.

Pike Circuit Court.

COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
EASTERN KENTUCKY COAL LANDS CORPORATION & C. B. HILLHOUSE, ETC., Defendants.

Judgment.

This cause coming on to be heard at the regular call of the docket at the regular February term of the Pike Circuit Court, to wit:

February 14, 1908, whereupon came the plaintiff by the
303 Commonwealth's attorney and announced ready for trial; also came the defendants, Eastern Kentucky Coal Lands Corporation and C. B. Hillhouse by counsel and announced ready for trial; thereupon came the following jury to wit:

M. C. Thornbury, H. M. Smith, Calvin Runyon, Mont Bevins, Calvin Taylor, Bud Maynard, Jerry Smith, Ulysses Hatfield, Charlie Barrett, Bart Owens, Russel Howard, T. B. Campbell, lawful citizens, residents and house keepers of Pike County and otherwise qualified as jurors and being duly selected, summoned, empaneled and accepted, were sworn in the manner prescribed by law; thereupon the attorney for the Commonwealth stated the case for the plaintiff and counsel for the Eastern Kentucky Coal Lands Corporation and C. B. Hillhouse and then stated the case for the defendants; A. E. Auxier, the attorney for non-resident defendants being present.

Thereupon the plaintiff, to maintain the issues upon its part, introduced its evidence to the jury, at the close of which the defendants, Eastern Kentucky Coal Lands Corporation and C. B. Hillhouse, offered to read as evidence to the jury the entire record in the Pike

County and Circuit Court in the matter of the application by said Eastern Kentucky Coal Lands Corporation to have listed and
304 have assessed the property referred to to the reading of which the plaintiff objected, the Court sustained the objections and said defendants excepted. The said defendants offering no other evidence and no evidence being offered on behalf of the defendants, constructively summoned, the Court instructed the jury in writing. And the jury after hearing the evidence introduced by the parties and the instructions of the Court and the argument of the counsel, retired and presently returned into Court the following verdict, endorsed upon the instructions:

"We the jury agree and find for the plaintiff and against all the defendants."

M. C. THORNBURY,
One of the Jury.

And thereupon this cause is now submitted for judgment, and the Court being sufficiently advised upon the pleadings, exhibits, proof and verdict of the jury set out, finds, decrees and adjudges that the defendants and each of them and those by, through and under whom they claim failed to list for assessment and taxation the lands in said petition and hereinafter described, as of the 15th day of September, 1901, the 15th day of September, 1902, the 15th day of September, 1903, the 1st day of September, 1904 and the 1st day of September, 1905, and also failed to pay the taxes charged
305 against them and those under whom they claim, as the owner and claimant thereof, upon said dates for each and of — said years, and said defendants and each and all of them and those by, through and under whom they are adjudged and decreed to be delinquent.

It is further ordered and adjudged and decreed that the title and claim of each and all of the defendants and those by, through and under — they claim to the lands in the petition and hereinafter described, by, through and under the patents and survey in the petition and hereinafter described be, and the same is now hereby forfeited and said title and claim thereto is now transferred to and vested in the Commonwealth.

The patents and survey, title and claim under which — is hereby adjudged to be forfeited and adjudged vested in the Commonwealth and lands therein described are as follows, to-wit:

Tract 1.

That certain tract or parcel of land, containing 7,537 acres, by survey bearing date the 17th day of April, 1787, which was granted by the Commonwealth of Virginia, to John Walker, Rober- Johnson, and Reuben Twyman by letters patent bearing date the 16th day of December, 1789, a copy of which said patent marked exhibit No. 1, is filed herewith as part hereof and which said tract of land
306 now wholly or partly in the County of Pike, State of Kentucky, but at the time of said survey in the County of Bour-

bon, State of Virginia, is, and in said survey and patent was, described as follows:

Lying and being in the County of Bourbon, on the south side of Big Sandy and bounded as followeth, to-wit:

"Beginning at two poplars and hickory on the bank of Sandy where the County line strikes said Sandy river; thence down Sandy, north 20, west 160 poles; west 20 poles south 50 poles; west 30 poles; north 60 and west 40 poles; north 32, west 160 poles; north 85, west 160 poles; to the mouth of a branch; north 18, east 60 poles; north 55, west 80 poles; south 35, west 520 poles; to two ashes, sugar tree, lynn, leaving Sandy and running south 45, west 1101¾ poles to two white oaks; thence south 45, east 1131 poles to a chestnut; north 45, east 1101¾ poles to the beginning." Which said patent is recorded in the land office of Kentucky, Book 12, of (Va.) Grants, page 254.

307 Tract II.

That certain tract or parcel of land containing 4060 acres by survey bearing date the 18th day of April, 1787, which was granted by the Commonwealth of Virginia to John Craig by letters, patent bearing date the 4th day of February, 1790, a copy of which said patent marked "Exhibit No. 2", is filed herewith as part hereof, and which said tract of land now wholly or partly in the County of Pike, State of Kentucky, but at the time of said survey, in the County of Bourbon, State of Virginia, is, *is* and in said survey and patent was described as follows:

Lying and being in the County of Bourbon, on the south west side of Big Sandy, and bounded as followeth, to wit:

"Beginning at the lower side at the mouth of Craig's Creek on the bank of Sandy at a poplar and ash; thence down Sandy and binding thereon north 15, east 240 poles; north 85, west 100 poles; south 24, west 92 poles; south 60, west 52 poles; south 73, west 86 poles, north 20, west 280 poles; north 56, west 360 poles; north 45, west 180 poles; north 25, west 204 poles to two sugar trees, thence south 45, west 530 poles to a stake; thence south 45, east 1200 poles to two maples and poplar; thence north 45, east 541 poles to the
308 beginning." Which said patent is recorded in the land office of Kentucky, in Book 12, of (Va.) Grants, page 352.

Tract III.

That certain tract or parcel of land containing 5940 acres by survey bearing date the 18th day of April, 1787, which was granted by the Commonwealth of Virginia, to John Craig by letters patent, bearing date the 2nd day of ~~February~~, 1790, a copy of which said patent marked "Exhibit No. 3" is filed herewith as part hereof, and which said tract of land now wholly or partly in the County of Pike, State of Kentucky, but at the time of said survey in the County of Bourbon, State of Virginia, is, and in said survey and patent was, described as follows:

Lying and being in the County of Bourbon on the south west side of Big Sandy River, and bounded as followeth, to-wit:

"Beginning at the lower corner on Sandy at said Walker's survey of 4060 acres at two sugar trees; thence down Sandy as it meanders
north 35, east 114 poles; north 5, west 234 poles; north 25,
309 west 160 poles; north 75, west 140 poles; north 40, west 212
poles to the mouth of Elkhorn; north 50, west 108 poles; north 65, west 170 poles; north 45, west 180 poles; north 60, west 80 poles to a walnut, sugar tree, hickory and lynn; thence south 45, west 672 poles to a white oak; thence south 45, east 1180 poles crossing Elkhorn to a stake corner to said Walker's 4060 acres survey; thence with the line of said survey north 45, east 530 poles to the beginning." Which said patent is recorded in the land office of Kentucky in Book 12, in (Va.) Grants, page 348.

Tract IV.

That certain tract or parcel of land containing 20,000 acres by survey, bearing date the 17th day of April, 1787, which was granted by the Commonwealth of Virginia to Daniel Duvall and Charles Marshall by letters patent bearing date the 14th day of December, 1789, a copy of which said patent marked "Exhibit No. 4", is filed herewith as part hereof, and which said tract of land now wholly
or partly in the County of Pike, State of Kentucky, but at
310 the time of said survey in the County of Bourbon, State of
Virginia, is, and in said survey and patent was described as follows:

Lying and being in the County of Bourbon, of the waters of Big ——, and bounded as followeth, to wit:

"Beginning at the upper corner on the bank of Sandy of a survey of 4,060 acres made in the name of Merry Walker; said survey is the upper survey on Sandy that was made for said Walker by virtue of part of his entry of 162,518 acres entry that was not withdrawn to begin at the lower side of the mouth of Craigs Creek at an ash and poplar; thence up Sandy with its meanders; south 26, east 160 poles; north 68, east 160 poles; south 35, east 120 poles to two ashes, a sugar tree and lynn, this being the lower corner on Sandy of a survey made for John Walker & Company, that was located in the same place that John Fowler's entry was withdrawn from; thence with the line of said survey south 45, west 1101¾ poles to two white oaks; thence with another of his lines south 45 degrees, east 1131 poles to a chestnut tree; thence south 45 degrees west 1969 poles to a stake; thence
north 45 degrees, west 1460 poles to two sugar trees in the line
311 of the 40,518 acres that was withdrawn from the middle of the
said Walker's entry; thence with a line of the same north 45 degrees, east to the corner of the 20,000 acres surveyed by said Walker, and with the line of said survey the same course to the corner of the first mentioned 4,060 acres survey, and with the line of the same the same course, the whole amounting to 2,939¾ poles to the beginning."

Which said patent is recorded in the Land Office of Kentucky, in Book 12, of (Va.) Grants, page 317.

Tract V.

That certain tract or parcel of land containing 20,000 acres by survey, bearing date the 18th day of April, 1787, which was granted by the Commonwealth of Virginia to Richard Adams by letters patent, bearing date the 24th day of February, 1790, a copy of which said patent, marked "Exhibit No. 5", is filed herewith as part hereof and which said tract of land, now wholly or partly in the County of Pike, State of Kentucky, but at the time of said survey, in the County of Bourbon, State of Virginia, is, and in said survey and patent was, described as follows:

Lying and being in the County of Bourbon, on the waters of Big Sandy, and bounded as followeth, to wit:

312 "Beginning at the most westerly corner of Daniel Duvall's and Charles Marshall's survey of 20,000 acres at two sugar trees; thence with the line of the same, south 45, degrees, east 1460 poles to a stake; thence south 45 degrees west 2191¾ poles to a stake; thence south 45 degrees west 2191¾ poles to three chestnut trees; thence north 45 degrees, west 1460 poles to two sugar trees; thence north 45 degrees, east 2,190¾ poles to the beginning." Which said patent is recorded in the Land Office of Kentucky, in Book 12, of (Va.) Grants, page 384.

Tract VI.

That certain tract or parcel of land containing twenty thousand (20,000) acres, by survey bearing date the 19th day of April, 1787, which was granted by the Commonwealth of Virginia to John Craig, by letters patent bearing date the 4th day of February, 1790, a copy of which said patent marked "Exhibit No. 6", is filed herewith as part hereof, and which said tract of land now wholly or partly in the County of Pike, State of Kentucky, but at the time of said

313 survey in the County of Bourbon, State of Virginia, is, and in said survey and patent was, described as follows:

Lying and being in the County of Bourbon, on the waters of Big Sandy, and bounded as followeth, to-wit:

"Beginning at a white oak, it being the west corner of said Walker's survey of 5,940 acres, and with the back line of said survey south 45 degrees, east 1180 poles to a 4,060 acre survey of said Walker's and with the back line of said survey the same course 1200 poles to the south corner of said survey, two maples and poplar; thence south 45 degrees, west 1344 poles to a sugar tree, poplar and walnut; thence north 45 degrees, west 2,380 poles to two red oaks; thence north 45 degrees, east 1,344 poles to the beginning." Which said patent is recorded in the Land Office of Kentucky, in Book 12, of (Va.) Grants, page 351.

Tract VII.

That certain tract or parcel of land containing 40,418 acres, by survey bearing date the 15th day of March, 1788, which was

314 granted by the Commonwealth of Kentucky to John May and David Ross, by letters patent bearing date the 11 day of

April, 1794, a copy of which said patent, marked "Exhibit No. 7", is filed herewith as part hereof, and which said tract of land now wholly or partly in the County of Pike, State of Kentucky, but at the time of said survey in the County of Bourbon, State of Virginiia, is, and in said survey and patent was, described as follows:

Lying and being in the County of Bourbon, on Shelby's Creek, a western branch of Sandy, and bounded as followeth, to wit:

"Beginning at two red oaks, this being the west corner of a survey of 20,000 acres, made the 19th day of April, 1787, for Merry Walker; thence south 45 degrees, east 2380 poles to a sugar tree, poplar, and walnut, said Walker's south corner; thence south 45 degrees, west 2717 poles to two sugar trees, a poplar and lynn at the head of a spring; thence north 45 degrees, west 1120 poles to a large Lick, the same course continued in all 2,380 poles, crossing several branches of Shelby's Creek to two chestnut oaks; thence north 45 degrees, west 2,717 poles crossing main Shelby's Creek to the begin-
315 ning." Which said patent is recorded in the Land Office of Kentucky, in Book 3, of Grants, page 514.

Tract VIII.

That certain tract or parcel of land, containing 5000 acres, by survey bearing date the 22 day of April, 1787, which was granted by the Commonwealth of Virginia to John Craig by letters patent, bearing date the 4th day of February, 1790, a copy of which said patent marked "Exhibit No. 8", is filed herewith as part hereof, and which said tract of land now wholly or partly in the County of Pike, State of Kentucky, but at the time of said survey in the County of Bourbon, State of Virginia, is, and in said survey and patent was, described as follows:

Lying and being in the County of Bourbon, on the waters of Big Sandy river, and bounded as followeth, to wit:

"Beginning at two chestnut oaks, being the west corner of the 40,518 acres that was withdrawn from the said entry; thence south 45 degrees, E. 1190 poles to a sugar tree, S. 45 degrees, west 672 poles to a stake; thence north 45 degrees, west 1190 poles to
316 two white oaks; thence north 45 degrees; east 672 poles to the beginning." Which said patent is recorded in the Land Office of Kentucky, in Book 12, of (Va.) Grants, page 351.

Tract IX.

That certain tract or parcel of land containing 5,000 acres by survey, bearing date the 23rd day of April, 1787, which was granted by the Commonwealth of Virginia to John Craig, by letters patent bearing date the 2nd day of February, 1790; a copy of which said patent marked "Exhibit No. 9", is filed herewith as part hereof, and which said tract of land now wholly or partly in the County of Pike, State of Kentucky but at the time of said survey in the County of Bourbon, State of Virginia, is, and in said survey and patent was, described as follows:

Lying and being in the County of Bourbon, on the waters of Big Sandy river, and bounded as followeth, to wit:

"Beginning at a sugar tree, the east corner of said Walker's survey of 5,000 acres, and with the line of said survey south 45 degrees, west 672 poles to a stake; thence south 45 degrees, east 1,190 poles to two white oaks; thence north 45 degrees, east 672 poles to two sugar trees, a poplar and lynn; thence north 45 degrees, west
317 1120 poles to a large Lick, continued in all 1190 poles to the beginning." Which said patent is recorded in the Land Office of Kentucky, in Book 12, of (Va.) Grants, page 350.

Tract X.

That certain tract or parcel of land containing 20,000 acres by survey, bearing date the 24th day of April, 1787, which was granted by the Commonwealth of Virginia to John Craig by letters patent bearing date the 4th day of February, 1790, a copy of which said patent marked "Exhibit No. 10" is filed herewith as part hereof, and which said tract of land now wholly or partly in the County of Pike, State of Kentucky, but at the time of said survey in the County of Bourbon, State of Virginia, is, and in said survey and patent was, described as follows:

Lying and being in the County of Bourbon, on the waters of Big Sandy, and bounded as follows, to wit:

"Beginning at two white oaks, it being the west corner of said Walker's survey of 5,000 acres; thence with said survey, south 45 degrees, east 1190 poles, crossing some of the branches of
318 Shelby's Creek to the west corner of another survey of 5,000 acres in the name of said Walker, and with the line of said survey the same course 1190 poles to two white oaks; thence south 45 degrees, west 1,344 poles to two red oaks; thence north 45 degrees, west 2380 poles crossing some of the branches of Shelby's Creek to two white oaks; thence north 45 degrees, east 1344 poles to the beginning." Which said patent is recorded in the Land Office of Kentucky, in Book 15, of (Va.) Grants, page 211.

Tract XI.

That certain tract or parcel of land containing 14,280 acres, by survey bearing date the 13th day of April, 1787, which was granted by the Commonwealth of Virginia to Benjamin Robinson, Richard Young and John Robinson by letters patent bearing date the 21st day of January, 1792, a copy of which said patent marked "Exhibit No. 11", is filed herewith as part hereof and which said tract of land now wholly or partly in the County of Pike, State of Kentucky, but at the time of said survey in the County of Bourbon, State of
319 Virginia, is, and in said survey and patent was, described as follows:

Lying and being in the County of Bourbon, on the Big Sandy river, and bounded as followeth, to wit:

"Beginning at a walnut, sugar tree, hickory, and lynn, lower corner of an entry of 162,518 acres in the name of Merry Walker; thence with the lower line of said entry south 45 degrees, west 2,500 poles crossing Shelby Creek to two white oaks; thence north 45 de-

grees, west 1024 poles to two white oaks; thence north 45 degrees, east 2,200 poles to three sugar trees on the bank of Sandy; thence up Sandy as it meanders south 246 poles; south 85 — east 172 poles; north 70 degrees, east 236 poles, south 20 degrees, east 80 poles; south 35 degrees, west 140 poles; south 45 degrees, east 196 poles; south 30 degrees; east 160 poles; north 35 degrees, east 100 poles to the mouth of Shelby's Creek, continued 180 poles further, south 80 degrees, east 72 poles; south 60 degrees, east 160 poles to the beginning." Which said patent is recorded in the Land Office of Kentucky, in Book 14, of (Va.) Grants, page 376.

320 Tract XII.

That certain tract or parcel of land containing 16,000 acres, by survey bearing date the 3rd day of March, 1787, which was granted by the Commonwealth of Virginia to John Weaglesworth and Richard Young by letters patent bearing date the 21st day of January, 1792, a copy of which patent marked "Exhibit No. 12", is filed herewith as part hereof, and which said tract of land now wholly or partly in the County of Pike, State of Kentucky, but at the time of said survey in the County of Bourbon, State of Virginia, is and in said survey and patent was described as follows:

Lying and being in the County of Bourbon, on the waters of Big Sandy river and bounded as followeth, to wit:

"Beginning at two white oaks, the south corner of Benjamin Roberson and Richard Young and John Robinson's survey of 14,280 acres, and in the line of Merry Walker's entry of 162,518 acres, and with said Walker's line south 45 degrees, west 2,500 poles crossing several small branches of Shelby's Creek to two sugar trees; thence north 45 degrees, west 1,024 poles to two chestnut oaks; thence north 45 degrees, west 2,500 poles to two white oaks; thence south 45 degrees, east 1024 poles to the beginning.

321 Which said patent is recorded in the Land Office of Kentucky, in Book 14, of (Va.) Grants, page 515.

Tract XIII.

That certain tract or parcel of land containing 10,000 acres by survey bearing date the 14th day of May, 1787, which was surveyed in the name of Mitchael Ryon, a copy of which said survey marked "Exhibit No. 13", is filed herewith, as part hereof, and which said tract of land now wholly or partly in the County of Pike, State of Kentucky, but at the time of said survey in the County of Bourbon, State of Virginia, is, and in said survey was, described as follows:

Lying and being in the County of Bourbon, on the waters of Big Sandy, and bounded as follows, to wit:

"Beginning at A two sugar trees being the south corner of I. Weaglesworth and Richard Young's survey of 16,000 acres in the line of Merry Walker's entry of a 162,518 acres, and with said Walker's line; south 45 degrees, west 1000 poles to a white oak; thence north 45 degrees west 1,600 poles; to two chestnut trees; thence
322 north 45 degrees, east 1000 poles to a white oak; thence south 45 degrees, east 576 poles to Weaglesworth and Young's west

corner, and with their line same course continued in all 1,600 poles to the beginning." Which said survey is recorded in the Clerk's office of the County Court of Bourbon County, Kentucky, in book "A" of surveys, page 73.

Tract XIV.

That certain tract or parcel of land containing 15,246 acres by survey, bearing date the first day of May, 1787, which was granted by the Commonwealth of Virginia to William Robinson, Benjamin Roberson, Michael Robinson, Jr., John Robinson, Mary McGee, Betsy Robinson, Mitchael Robinson, and Henry Robinson, James Robinson, John Robinson, William McGee, and Thomas McGee by letters patent bearing date the 21st day of January, 1792; a copy of which said patent marked "Exhibit No. 14", is filed herewith as part hereof, and which said tract of land now wholly or partly in the County of Pike, State of Kentucky, but at the time of said survey in the County of Bourbon, State of Virginia, is, and said survey and patent
323 was, described as follows:

Lying and being in the County of Bourbon, on the waters of Big Sandy, and bounded as followeth, to wit:

"Beginning at a sugar tree, lower corner of Benjamin Robinson & Company's survey of 12,280 acres; thence with the lower line of said survey, south 45 degrees, west 2,200 poles to their west corner, two white oaks; thence north 45 degrees, west 1,108 poles & 8 poles to two sugar trees; thence north 45 degrees east 2,200 poles to a poplar; thence south 45 degrees, east 1108 and 8 poles to the beginning." Which said patent is recorded in the Land Office of Kentucky, in Book 14, of (Va.) Grants, page 379.

Tract XV.

That certain tract or parcel of land containing 5,000 acres by survey bearing date the 5th day of May, 1787, which was granted by the Commonwealth of Kentucky *of* Preeson Boudain and Richard Young by letters patent bearing date the 8th day of March, 1793; a copy of which said patent marked "Exhibit No. 15", is filed herewith as part hereof and which said tract of land now wholly or
324 partly in the County of Pike, State of Kentucky, but at the time of said survey in the County of Bourbon, State of Virginia, is, and in said survey and patent was, described as follows:

Lying and being in the County of Bourbon, on the waters of Big Sandy river, and bounded as followeth, to wit:

"Beginning at two white oaks, it being the west corner of Benjamin Robinson and Company's survey of 14,280 acres, and corner to Weaglesworth and Y-ung's survey of 16,000 acres; thence with said Weaglesworth and Young's line; south 45 degrees, west 1,300 poles to a sugar tree; thence north 45 degrees, west 615 3/10 poles to a poplar; thence north 45 degrees, east 13,000 poles crossing some small branches to two oaks in the line of William Robinson & Company's survey of 15,246 acres; thence with the line of said survey, south 45 degrees, east 615 3/10 poles to the beginning." Which said patent is recorded in the Land Office of Kentucky, in book 3, of Grants, page 34.

Tract XVI.

That certain tract or parcel of land containing 23,250 acres by survey bearing date the 15th day of September, 1788, which
325 is granted by the Commonwealth of Virginia to James Garrard, by letters patent bearing date the 19th day of October, 1789, a copy of which said patent marked "Exhibit No. 16", is filed herewith as part hereof, and which said tract of land now wholly or partly in the County of Pike, State of Kentucky, but at the time of said survey in the County of Bourbon, State of Virginia, is, and in said survey and patent was, described as follows:

Lying and being in the County of Bourbon, on the west side of Big Sandy, and bounded as followeth, to wit:

"Beginning at a poplar, the north corner of William Robinson & Company's survey of 15,246 acres; thence south 45 degrees, west 2200 poles to said Robinson & Company west corner at two sugar trees; thence north 45 degrees, west 1480 poles to a poplar, ash and sugar tree; thence north 45 degrees, east 2,020 poles to three buckeyes, six sugar trees and two walnut trees standing on the bank of Sandy immediately below the mouth of Bear Creek; thence up Sandy binding thereon 1,250 poles on a reduced line to a buckeye and sugar tree; thence leaving Sandy and running south 3 degrees, west 530 poles to the beginning.

Which said patent is recorded in the Land Office of Kentucky, in Book 12, of (Va.) Grants, page 339.

326 Tract XVII.

That certain tract or parcel of land containing 30,000 acres, by survey, bearing date the 19th day of March, 1788, which was granted by the Commonwealth of Virginia to Michael O'Meally by letters patent bearing date the 20th day of February, 1792; a copy of which said patent marked "Exhibit No. 17", is filed herewith as part hereof, and which said tract of land now wholly or partly in the County of Pike, State of Kentucky, but at the time of said survey in the County of Bourbon, State of Virginia, is, and in said survey and patent was, described as follows:

Lying and being in the County of Bourbon, (Formerly Fayette, in the District of Kentucky) on the Louvisa river, a fork of Sandy, the waters of Ohio, and bounded as followeth, to wit:

"Beginning at the upper corner of John Walker & Company's survey of 7,537 acres at two poplars and an ash on the west bank of said river, and running down meanders of said river and binding on the same 1770 poles to a poplar and ash, the upper corner of Merry Walker's survey of 4,060 acres; thence north 45 degrees, east 3488 poles crossing the river and a large branch to an ash
327 and sugar tree; thence south 45 degrees, east 1,460 poles to two white oaks; thence south 45 degrees, west 3,287 poles crossing a large Creek and the river to the Beginning."

Which said patent is recorded on the Land Office of Kentucky, in Book 14, of (Va.) Grants, page 396.

Tract XVIII.

That certain tract or parcel of land containing 30,000 acres by survey, bearing date the 19th day of March, 1788, which was granted by the Commonwealth of Virginia to Michael O'Meally by letters patent bearing date the 20th day of February, 1792; a copy of which said patent marked "Exhibit No. 18", is filed herewith as part hereof, and which said tract of land now wholly or partly in the County of Pike, State of Kentucky, but at the time of said survey in the County of Bourbon, State of Virginia, is, and in said survey and patent was described as follows:

Lying and being in the County of Bourbon, and District of Kentucky, on the Louvisa Fork of Sandy River, the waters of the Ohio, and bounded as followeth, to wit:

328 "Beginning at the lower end of said Smith's 30,000 acres survey No. 1 at a poplar, and ash, corner to said survey and to a survey made in the name of Merry Walker of 4,060 acres, and on the west bank of said river in the bottom and running down the meanders of Sandy on the west side and binding on the same 2,950 poles to a walnut, sugar tree, hickory, and lynn, on the lower corner of said Walker's survey of 5,940 acres, and runneth thence north 45 degrees, east 1,920 poles crossing said river to two sugar trees; thence south 45 degrees, east 2,380 poles to a white oak; thence south 45 degrees, west 2,116 poles crossing a large creek and a river to the beginning."

Which said patent is recorded in the Land Office of Kentucky, in book 14, of (Va.) Grants, page 392.

Tract XIX.

That certain tract or parcel of land containing 5,000 acres by survey, bearing date the 20th day of March, 1788, which was granted by the Commonwealth of Virginia to Michael O'Meally by letters patent bearing date the 20th day of February, 1792, a copy
329 of which said patent marked "Exhibit No. 19", is filed herewith as part hereof, and which said tract of land now wholly or partly in the County of Pike, State of Kentucky, but at the time of said survey in the County of Bourbon, State of Virginia, is, and in said survey and patent was, described as follows:

Lying and being in the County of Bourbon, and District of Kentucky, in the forks of Main Sandy river, and the Louvisa on John's Creek, a branch of Louvisa river, and bounded as followeth, to wit:

"Beginning at two beech trees, and maple, corner to said Smith's survey No. 7; thence south 60, west 800 poles to two beech trees and maple; thence north 30 degrees, west 1,000 poles to a beech and black oak, corner to said Smith's survey No. 1, and with the line of the same, north 60 degrees, east 800 poles to a walnut and black oak, corner to said Smith's surveys Nos. 1 and 7, and with a line of the seventh, south 30 degrees, east 1,000 poles to the beginning." Which said patent is recorded in the Land Office of Kentucky, in Book 14, of (Va.) Grants, page 584.

330 Tract XX.

All that part that is situated in Pike County, Kentucky, west of the top of the ridge that divides the waters of Louvisa fork from the waters of Tug Fork of Sandy River of that certain tract or parcel of land containing 150,000 acres, by survey, bearing date the 17th day of December, 1795, which was granted by the Commonwealth of Virginia to John Henry and Alexandria Smith by letters patent bearing date the 20th day of August, 1796; a copy of which said patent marked "Exhibit No. 20", is filed herewith as part hereof and which said tract of land now wholly or partly in the County of Pike, State of Kentucky, but in said survey and patent stated to be in the County of Russell, State of Virginia, is, and in said survey and patent was described as follows:

Lying and being in the County of Russell, and is bounded as followeth, to wit:

"Beginning on the east bank of Great Sandy, at the junction of Russell and Louvisa branches which form it at a sycamore tree marked as a corner and running thence up the Louisa or northeasterly branch on the east side binding thereon according to its several courses and meanders 2,100 poles to a buckeye, a sugar
331 tree, and large poplar tree standing on the bank at the lower end of a bottom some distance below the mouth of the first branch that empties below Grapevine on the same side, which tree was marked as a corner by Henry Smith in February, 1798, and running thence south 63 degrees, east 4,210 poles to pointers; thence north 2,960 poles to a stake *to* a line of Wm. Merritt's survey of 100,000 acres with the lines thereof; north 63 degrees, west 2,000 poles to a white oak and north 45 degrees, east 3,050 poles to an ash, a buhkeye, a poplar, and cluster of sycamore trees standing on the bank of that branch of Sandy which separates Russell from Wythe and Kenhawa Counties about a computed mile above the mouth of a creek which empties on the south side called Blackber-y, which were marked by Henry Smith at the time aforesaid and since by French Mason as the lower corner to Merrett's said survey and one of the sycamores with the letters "F. M.", thence down the last mentioned branch of Sandy, binding thereon the South side according to its several courses and meanders 8,076 poles to an elm birch, marked as a corner standing on the south bank of the said branch 49 poles
below the mouth of a creek that empties thereinto on the
332 south side, called Comfort's Creek, which trees are also a corner to a survey made for Alexander Walcott; thence with a line of the last mentioned survey south 13 degre-s, west 7480 poles to the beginning."

Which said patent is recorded in the Land Office of Virginia, in Book 34, page 505.

Tract XXI.

All that part that is situated in Pike County, Kentucky, west of the top of the ridge that divides the waters of Louvisa Fork from the waters of Tug Fork of Sandy river of that certain tract or parcel of land containing 300,000 acres by survey bearing date the 28th

day of November, 1795, which was granted by the Commonwealth of Virginia to Benjamin Haskell by letters patent bearing date the 16th day of February, 1797, a copy of which said patent, marked "Exhibit No. 21", is filed herewith as part hereof, and which said tract of land now wholly or partly in the County of Pike, State of Kentucky, but in said survey and patent said to be in the County of Russell, State of Virginia, is, and in said survey and patent was, described as follows:

333 Lying and being in the County of Russell, adjoining Jesse Evens' survey of 180,000 acres, and is bounded as followeth, to wit:

"Beginning at a chestnut oak, the second corner to Jesse Enens' said survey which stand- 3,942 poles north of the head of Stock Creek at which a lynn and three poplars marked as a corner stands, and with lines of the aforesaid survey N. 57 degrees, E. 3,216 poles to a maple and two chestnuts marked "J. G."; N. 11 degrees E. 7,160 poles to a white oak and spanish oak marked "J. G."; N. 67 degrees E. 2,634 poles passing a corner of said Evans' survey at 1,400 poles to three poplars and a sugar tree, corner to Richard Smith's survey of 200,000 acres; N. 52 degrees, W. 8,220 poles to a red oak and two beeches marked "J. G.", and thence S. 14,780 poles to the beginning." Which said patent is recorded in the Land Office of Virginia, in Book 38, page 1.

Tract XXII.

That certain tract or parcel of land containing 8,000 acres,
334 by survey bearing date the 25th day of April, 1789, which was granted by the Commonwealth of Kentucky to George Lewis, by letters patent bearing date the 16th day of October, 1795, a copy of which said patent, marked "Exhibit No. 22", is filed herewith as part hereof, and which said tract of land, no- wholly or partly in the County of Pike, State of Kentucky, but at the time of said survey in the County of Bourbon, State of Virginia, is and in said survey and patent was, described as follows:

Lying and being in the County of Bourbon, on the waters of Big Sandy, and bounded as followeth, to wit:

"Beginning at a white oak, corner of Michael Ryan's survey of 10,000 acres in Merry Walker's line; thence north 45 degrees, west 1,600 poles with Ryan's line to his corner, two chestnut trees; thence south 45 degrees, west 800 poles to a sugar tree, corner to said Grant's 12,058¾ acres survey; thence with the line of said survey; south 45 degrees, east 1,600 poles to the beginning corner of said Grant's 12,058¾ acre survey at two white oaks in Merry Walker's line; thence with his line, north 45 degrees, east 800 poles to the beginning." Which said patent is recorded in the
335 Land Office of Kentucky, in book 5, of Grants, page 213.

All other questions not herein specifically adjudged, are reserved for further adjudication.

To this judgment, the defendants, Eastern Kentucky Coal Lands Corporation and C. B. Hillhouse, object and except.

Pike Circuit Court.

EASTERN KENTUCKY COAL LANDS CORPORATION, Appellants.
vs.
COMMONWEALTH OF KENTUCKY, Appellee.

Schedule.

The Clerk of the Pike Circuit Court will copy the entire record for the Court of Appeals upon the judgment rendered February 14th, 1908, wherein the Commonwealth of Kentucky is Plaintiff and the Eastern Kentucky Coal Lands Corporation defendant except the record of the case of Eastern Kentucky Coal Lands Corporation against the Commonwealth of Kentucky on Petition
336 to list for taxation made an exhibit and offered in evidence in this cause a transcript of which the clerk of this court has heretofore made and which is now on file in the office of the clerk of the Court of Appeals.

THOS. H. HARMAN,
WILLIAM JACKSON HENDRICK,
Counsel for Defendant and of Appellant,
Eastern Kentucky Coal Lands Corporation.

Filed March 4th, 1908.

J. B. POLLEY, *Clerk.*
By A. D. CLINE, *D. C.*

Pike Circuit Court.

COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
EASTERN KY. COAL LANDS CORPORATION, & ETC., Defendants.

Clerk's Certificate.

I, J. B. Polley, Clerk of the Pike Circuit Court, certify that the above and foregoing transcript is a true and correct copy of the record as called for in the schedule, wherein the Common-
337 wealth of Kentucky is Plaintiff and the Eastern Kentucky Coal Lands Corporation & Etc. are defendants, as appears *to me* record in my said office.

Given under my hand as clerk aforesaid, this the 4th day of March, 1908.

J. B. POLLEY, *Clerk.*
By A. D. CLINE, *D. C.*

Fee for copy, $63.00.

Attest:
J. B. POLLEY, *Clk.*
By A. D. CLINE, *D. C.*

338 Be it remembered that at a Court of Appeals held at the Capitol at Frankfort on the 13th day of April 1908, the following order was entered to-wit:

Pike.

EASTERN KY. COAL LANDS CORPORATION
v.
COMMONWEALTH.

Floyd.

SAME
v.
SAME.

Came appellant in foregoing cases by counsel, and filed notice and brief, and on motion said cases are ordered advanced and submitted with thirty days' leave to appellee to file brief.

And afterwards at a Court of Appeals held at the Capitol at Frankfort on the 20th day of June, 1908, the following judgment was entered to-wit:

EASTERN KENTUCKY COAL LANDS CORPORATION, Appellant,
vs.
COMMONWEALTH, Appellee.

Appeal from Pike Circuit Court.

The Court being sufficiently advised it seems to them there is no error in the judgment herein.

It is therefore considered that said judgment be affirmed, which is ordered certified to said court.

It is further considered that the appellee recover of the appellant, its costs herein expended.

And on said date the Court delivered the following opinion, which is in words and figures as follows to-wit:

339 JUNE 20" 1908.
(Not to be reported.)

Court of Appeals of Kentucky.

Appeal from Pike Circuit Court.

EASTERN KENTUCKY COAL LANDS CORPORATION, Appellant,
vs.
THE COMMONWEALTH OF KENTUCKY, Appellee.

J. C. TWYMAN, Appellant,
vs.
THE COMMONWEALTH OF KENTUCKY, Appellee.

G. B. GILL, ETC., Appellants,
vs.
THE COMMONWEALTH OF KENTUCKY, Appellee.

Opinion of the Court by Judge Lassing.

These appeals were sued out upon the same record, involve the same questions, were argued, and will be considered together. Under the provisions of Article Three of the Act of the Legislature, entitled, "Revenue and Taxation," approved March 15, 1906, the Commonwealth of Kentucky filed its petition in equity in
340 the Pike Circuit Court against appellants, Eastern Kentucky Coal Lands Corporation, J. C. Twyman, and others, seeking to forfeit the title of appellants to the lands described in the petition upon the alleged ground that they had not complied with the provisions of the Article with respect to the listing of the same and payment of taxes thereon as of September 15, 1901, September 15, 1902, September 15, 1903, September 1, 1904, and, September 1, 1905. Appellants Eastern Kentucky Coal Lands Corporation and J. C. Twyman were served with process. Appellants G. B. Gill, Etc., were made defendants as unknown defendants, owners and claimants, as authorized by the Article, and were constructively served with process by warning order, as required by the Code against non-resident and absent defendants, and also by publication, as required by the Act.

The petition described the land the title to which it was sought to be forfeited, by giving the patents, their dates, where recorded, and number of acres contained in each. It also described the land by metes and bounds, courses and distances; and there was filed with it copies of each of the patents, containing in the aggregate over 300,000 acres. It was further alleged that the defendants, Eastern Kentucky Coal Lands Corporation, J. C. Twyman, and the unknown and absent defendants were the owners or claimants of the land under the patents named, and that neither the original patentees nor any person in privity with them, nor the Eastern Kentucky Coal Lands Corporation, J. C. Twyman, or the other

named but not appealing defendants, nor the unknown defendants had ever listed the land or any part of it for taxation, or paid any taxes thereon, alleging specifically that they had so failed to
341 list or pay taxes thereon levyable and assessable as of the dates above named. Appellants Eastern Kentucky Coal Lands Corporation and J. C. Twyman filed general demurrers to the petition, after these had been overruled they filed separate answers; the former setting up claim to all of the land described in the petition; the latter claiming in connection with the other heirs of one Reuben Twyman, one of the three patentees named in one of the patents to be the owner of the land described in that patent, containing about 7,500 acres.

The answer of the corporation in addition to traversing some of the allegations of the petition pleaded affirmatively that in compliance with the provisions of Article Three it had filed its petition in the County Court of Pike County before January 1st, 1907, seeking to have the land claimed by it assessed as of said dates, and filed therewith copies of the proceedings, in that action in the county court and upon appeal in the circuit court. By this record it was shown that the corporation appellant in December, 1907, had filed its petition in the Pike county court claiming to comply with the provisions of the act, and at the same time attacking its constitutionality; that the county court, denying the sufficiency of the petition, but sustaining the validity of the Act dismissed the petition; and that a similar judgment had been entered in the circuit court upon appeal to it.

342 The answer of J. C. Twyman was similar in all material respects but he prosecuted no appeal to the circuit court from the judgment of the county court. While the action of the Commonwealth v. Eastern Kentucky Coal Lands Corporation, J. C. Twyman, and others, seeking to forfeit their title was pending and before trial and judgment, this court in the case of Eastern Kentucky Coal Lands Corporation v. Commonwealth of Kentucky, 32 Rep., 129, affirmed the judgment of the Pike circuit court in dismissing the petition of said corporation to list, upon the ground that it did not comply with the mandatory provisions of the Act, and sustaining the constitutionality of Article Three, upon which this forfeiture proceeding is now based. The suit in equity was thereupon tried before a jury, as the Act provides it shall be; and a verdict having been rendered in favor of the Commonwealth against all defendants judgment was entered forfeiting the title of appellants and each and all defendants to the land described in the petition under the patents named. From that judgment this appeal is prosecuted.

It is shown by the evidence that neither appellants nor any of the defendants nor the original patentees nor any person in privity with their title, either listed the property as of September 15, 1901, September 15, 1902, September 15, 1903, September 1st, 1904, and September 1st, 1905, or paid any taxes thereon levyable and
343 assessable as of said dates, nor paid any taxes whatever thereon since the year 1825, although the patents were issued prior to the year 1800, in fact the majority of them were issued by the State of Virginia prior to the year 1792, when Ken-

tucky became a State; prior to the year 1825 there was only an intermittent listing and payment of taxes upon some of the patents, the whole amount so paid not exceeding, perhaps, $100.00.

The various objections to the Act upon constitutional grounds were urged in the original appeal of Eastern Kentucky Coal Lands Corporation v. Commonwealth, 32 Rep., 129, and in the case of Kentucky Union Company v. Commonwealth, decided March 25, 1908, not only upon oral argument, but also in exhaustive briefs filed on behalf of appellants upon the appeal, and again with the petition for re-hearing. Because of the importance of the questions involved, the time for oral argument was extended in each case, and the questions presented in argument and brief received careful consideration. In each of these cases we concluded that the Act in question violated no provision of the constitution, either Federal or State. This conclusion is not shaken by the able re-argument on this appeal, and we now approve of and adhere to the opinions in those cases. In conformity with those opinions we hold that Article Three, as construed by this Court, does not violate the provisions of the Federal Constitution denying the passage by any State of ex post facto laws, laws impairing the obligations of contracts, or laws denying to any person the equal protection of the law, or depriving any person of his property without due process of law.

344 This construction of said Article is abundantly supported by the following:

Folk v. Mutual Reserve Fund Life Ass'n, etc., 207 U. S., 310.
Soper v. Lawrence Brothers, 201 U. S., 359.
Kelly v. City of Pittsburg, 104 U. S., 78.
Fay v. Crozier, 156 Fed., 496.
Asbill v. State of Kansas, U. S. Supreme Court, March 23, 1908.
King v. Mullins, 171 U. S., 404.
Reed v. Dingess, 60 Fed., 21-24.

The opinions in the former appeal of Eastern Kentucky Coal Lands Corporation, and Kentucky Union Company v. Commonwealth do not conflict with the cases of Commonwealth v. Ingalls, 28 Rep., 164, and Spalding, Revenue Agent, v. O'Callahan's Executrix, 25 Rep., 629, relied upon by appellants. In those cases the effort was to list the same property for the same years in the name of different persons in privity with each other—a pure sample of double taxation. It was held that such was not the intention of the Legislature and that the Commonwealth, like any other litigant, would not be allowed to play fast and loose. In argument it was admitted by appellee that the lower court erred in sustaining a demurrer to the answer of Twyman. This answer set out at length the petition filed by him in the county court. In this the land which he sought to have listed was specifically described so it could be identified. He sought to list the whole tract, without indefinite exclusions or exceptions; he did not seek to shift to the court

345 the burden imposed upon him by the act; so far as his petition disclosed, he was the owner of the entire tract which he sought to list, and not merely such parts thereof as were not owned

by others. His petition was unlike that of appellant Eastern Kentucky Coal Lands Corporation. He was seeking to avail himself of the provisions of the Act and had done all that could be reasonably required of him.

Appellants G. B. Gill, etc., did not appear in the lower court, but sued out an original appeal in this court. The action against them not only conformed to the provisions of the Code as against non-resident and absent defendants, but also to the additional requirements of the act as against such defendants, and they are bound by it.

For the reasons indicated the judgment of the lower court is affirmed as against appellants Eastern Kentucky Coal Lands Corporation, G. B. Gill, etc., but reversed as to appellant J. C. Twyman, and remanded for further proceedings consistent with this opinion.

* * * * * * *

Judge Hobson does not dissent from the opinion because he deems the matters concluded by the former opinions of the Court, although he adheres to the conclusions stated in his dissenting opinion in those cases.

346 Be it remembered that on July 13th, 1908, there was filed in the office of the Clerk of the Court of Appeals of Kentucky an assignment of errors which is attached hereto and which is as follows:

347 Supreme Court of the United States.

No. 297.

EASTERN KENTUCKY COAL LANDS CORPORATION, Plaintiff in Error.
vs.
COMMONWEALTH OF KENTUCKY, Defendant in Error.

Assignment of Errors.

Eastern Kentucky Coal Lands Corporation, Plaintiff in Error in the above entitled cause, complains of the judgment rendered therein by the Court of Appeals of Kentucky, and for Error therein assigns the following:

First. The Court erred in affirming the judgment of the Pike County Circuit Court, said judgment having been reviewed and affirmed on this Appeal.

Second. The Court erred in upholding the validity of Article III of the Act of March 15, 1906, of the Legislature of Kentucky:

(1) Because said Article III violates the Compact between Virginia and Kentucky of December 18, 1789.

(2) Because said Article III violates the provisions of the Constitution of Kentucky and the Constitution of the United States requiring due process of law.

(3) Because said Article III violates § 10 of Article I of the

Constitution of the United States, which declares that no State shall pass any bill of attainder or ex post facto law.

(4) Because said Article III violates § 10 of Article I of the Constitution of the United States which provides that no State shall pass any law impairing the obligation of Contracts.

(5) Because said Article III violates the Fourteenth
348 Amendment of the Constitution of the United States which provides that no State shall deprive any person of property without due process of law nor deny to any person within its jurisdiction the equal protection of the laws.

Third. Because that irrespective of the invalidity of said provisions of Article III of said Act this suit by the plaintiff herein against this defendant violates the aforesaid Sections, Article and Amendment of the Constitution of the United States because this defendant has complied with any and all (if any) of the provisions of said Revenue Act that are valid so far as the same are applicable to this defendant; if any of said provisions are valid with respect to this defendant; and this defendant has been guilty of ny wrong and has not done or omitted to do any act which would forfeit this defendant's title or claim to any of said lands even if said provisions of said Article III of said Revenue Act were valid.

Fourth. Because said Article III is an act of spoliation and lawless confiscation and is revolutionary and subversive of all constitutional and orderly government.

HOPPIN & BERARD,
JAMES H. HAZELRIGG,
WM. JACKSON HENDRICK,
Counsel for Plaintiff in Error.

349 And on said date there was filed in the office of the Clerk of the Court of Appeals a petition for a writ of error, which is attached hereto, and is as follows:

350 Court of Appeals of Kentucky.

No. 297.

EASTERN KENTUCKY COAL LANDS CORPORATION, Plaintiff in Error,
vs.
COMMONWEALTH OF KENTUCKY, Defendant in Error.

Petition for Writ of Error and Appeal.

The above named Eastern Kentucky Coal Lands Corporation conceiving itself ag-rieved by the decision made and judgment entered by the Court of Appeals of Kentucky in the cause of the above named plaintiff in error against the above named defendant in error in said Court of Appeals at its April Term 1908, towit, on June 20th, 1908, said Court being the highest court of the State of Kentucky and the court of last resort for the hearing and determination of said cause in which cause was drawn in question the validity of a statute of the

State of Kentucky, viz., Article III of the Act of March 15th, 1906 of the Legislature of Kentucky upon the ground that it is repugnant to the Constitution of the United States, is violative of the compact between Kentucky and Virginia of December 18th, 1789, is violative of the law requiring due process of law, and violates the law prohibiting the States from passing ex post facto laws, from passing laws imparing the obligation of contracts and for other reasons specified in the assignment of errors filed herewith, and under which
351 Constitution of the United States and laws thereunder, the plaintiff in error claimed protection, but the benefit of which is denied to the said plaintiff in error by the decision aforesaid, now wherefore, it presents its petition and assignment of errors and prays that this appeal be allowed and a writ of error issue out of the Supreme Court of the United States, to said Court of Appeals of Kentucky to the end that the transcript of the record, proceedings and papers in said matter may be removed to the said Supreme Court of the United States and the errors complained of may be examined and corrected and the judgment and decision aforesaid of said Court of appeals be reviewed and reversed.

WM. JACKSON HENDRICK.
HOPPIN & BERARD,
JAS. H. HAZELRIGG,
Attorneys for Plaintiff in Error.

Filed Jul- 13, 1908.
NAPIER ADAMS, *C. C. A.*

352 And on said date there was filed in the office of the Clerk of the Court of Appeals a writ of error from the Supreme Court of the United States, and order allowing same by the Chief Justice of the Court of Appeals of Kentucky, which is attached hereto and is as follows:

353 UNITED STATES OF AMERICA:

The President of the United States to the Honorable Judges of the Court of Appeals of Kentucky, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Appeals, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the suit between the Eastern Kentucky Coal Lands Corporation, appellant, and The Commonwealth of Kentucky, appellee, No. 297, wherein was drawn in question the validity of a statute or constitution of or an authority exercised under said State of Kentucky on the ground of their bein- repugnant to the Constitution or laws of the United States and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution of the United States and the decision was against the title, right, privilege or exemption specially set up or claimed under such clause of the said Constitution, a manifest error hath happened, to the great damage of the said Eastern Kentucky Coal Lands Corporation, as by its complaint ap-

pears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment therein be gi[illegible] that then, under your seal, distinctly and openly, you send t[illegible] record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within thirty days from the date hereof, in said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct the error what of right and according to the laws and customs of the United States shall be done.

354 Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 11th day of July, in the year of our Lord on- thousand nine hundred and eight, and of the Independence of the United States of America the one hundred and thirty third.

[Seal 6th Circuit Court, Eastern Ky. Dis., U. S. of America.]

CHARLES N. WIARD,
Clerk U. S. Circuit Court, Eastern District of Kentucky, at Frankfort.
By E. H. COLEMAN, *D. C.*

Allowed by:
ED. C. O'REAR,
Chief Justice of the Court of Appeals of Kentucky.

Filed July 13, 1908.
Att.:
NAPIER ADAMS, *C. C. A.*

355 And on said date there was filed in the office of the Clerk of the Court of Appeals a writ of error bond, and also a power of attorney from the American Surety Company of New York, to William J. Hendrick, and which are in words and figures as follows to-wit:

356 Court of Appeals of Kentucky.

No. 297.

EASTERN KENTUCKY COAL LANDS CORPORATION, Appellant,
vs.
COMMONWEALTH OF KENTUCKY, Appellee.

Know all men by these presents that Eastern Kentucky Coal Lands Corporation, principal, and the American Surety Company of New York, surety, are held and firmly bound unto the Commonwealth of Kentucky, in the sum of one thousand ($1,000) dollars, to be paid to the obligees herein; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally,

and our and each of our successors, heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 13th day of July, 1908.

Whereas the above named Eastern Kentucky Coal Lands Corporation hath prosecuted a writ of error from the Supreme Court of the United States to reverse the judgment rendered in the above entitled cause by the Court of Appeals of Kentucky:

Now, therefore, the condition of this obligation is such that if the above-named Eastern Kentucky Coal Lands Corporation shall prosecute its said writ of error to effect and answer all costs if it shall fail to make good its plea, then this obligation shall be void; otherwise the same shall be and remain in full force.

EASTERN KENTUCKY COAL LANDS CORPORATION.

357 AMERICAN SURETY COMPANY OF NEW YORK.

By WM. J. HENDRICK, *Attorney in Fact.*

Sealed and delivered in the presence of and approved by:

ED. C. O'REAR,

Chief Justice of the Court of Appeals of Kentucky.

Filed July 13th, 1908.

Att.:

NAPIER ADAMS, *Clerk.*

358 American Surety Company of New York.
Capital $2,500,000.

Know all men by these presents:

That the American Surety Company of New York, a corporation of the State of New York, of No. 100 Broadway, in the City of New York, in said State, has made, constituted and appointed, and by these presents does hereby make, constitute and appoint

Wm. J. Hendrick, of #2 Rector Street, New York, N. Y. its true, sufficient and lawful attorney, with full power and authority to make, execute and deliver, for it, in its name and in its behalf, as surety, a bond or undertaking as follows:

A bond for one thousand dollars ($1,000.00) on behalf of Eastern Kentucky Coal Lands Corporation on a writ of error from the Court of Appeals of Kentucky to the Supreme Court of the United States in the case of Eastern Kentucky Coal Lands Corporation against the Commonwealth of Kentucky, No. 297 hereby giving its said attorney full power and authority to do everything whatsoever requisite and necessary to be done for the purpose of making, executing and delivering such obligation as fully as the officers of said American Surety Company of New York could do if personally present, and hereby ratifying and confirming all that its said attorney shall lawfully do or cause to be done by virtue hereof, but reserving to itself full power of substitution and revocation.

359 In witness whereof, the said American Surety Company of New York has caused its corporate seal to be hereunto affixed

and these presents to be duly executed by its proper officers at the City of Cincinnati, State of Ohio, on this 11th day of July, 1908.

AMERICAN SURETY COMPANY OF NEW YORK,

[SEAL.] By W. S. DIGGS, *Resident Vice President.*

Attest:

E. P. MOORE,
Resident Assistant Secretary.

At a regular meeting of the Executive Committee of the Board of Trustees of the American Surety Company of New York, held at the office of the Company at No. 100 Broadway, in the City of New York, on the seventh day of November, 1906, the following resolution was adopted:

"Resolved, That one of the Resident Vice Presidents and one of the Resident Assistant Secretaries of this Company at Cincinnati, in the State of Ohio, be and they are hereby authorized and empowered to make, execute and deliver, in behalf of the Company, unto such person or persons in the State of Kentucky as they may select, its power of attorney constituting and appointing each such person its attorney in fact, with full power and authority to make, executed and deliver, for it, in its name and in its behalf, as surety,
360 any particular bond or undertaking that may be required in the State of Kentucky, the nature of such bond or undertaking to be in each instance specified in such power of attorney."

STATE OF NEW YORK,
County of New York, ss:

I, F. B. Holdridge, Assistant Secretary of the American Surety Company of New York, hereby certify that I have compared the foregoing resolution with the original thereof, as recorded in the Minute Book of said Company, and that the same is a correct and true transcript therefrom and of the whole of said original resolution.

Given under my hand and the seal of the Company at the City of New York this 15th day of November, 1906.

F. B. HOLDRIDGE,
Assistant Secretary.

STATE OF OHIO,
County of Hamilton, ss:

On this day personally appeared before me, a Notary Public, in and for the County aforesaid, W. S. Diggs, and E. P. Moore, who being duly sworn by me, did depose and say that they are respectively a Resident Vice President and a Resident Assistant Secretary, at the City of Cincinnati, of the American Surety Company of New York; and they, as such Resident Vice President and Resident Assistant Secretary, respectively did thereupon acknowledge and deliver the foregoing instrument of writing as and
361 for the act and deed of the American Surety Company of New York.

Witness my hand and seal this 11th day of July, 1908.
[SEAL.] JNO. P. RYAN,
Notary Public.

My Commission expires March 19, 1909.

Filed July 13, 1908.
NAPIER ADAMS, *C. C. A.*

362 And on said day there was filed in the office of the Clerk of the Court of Appeals the original citation with proof of service endorsed thereon, and which is attached hereto and is as follows, to-wit:

363 UNITED STATES OF AMERICA:

The President of the United States to the Commonwealth of Kentucky, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's Office of the Court of Appeals of Kentucky, wherein the Eastern Kentucky Coal Lands Corporation is plaintiff in error and you are defendant in error No. 297, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ mentioned, should not be corrected and why speedy justice should not be done by the parties in that behalf.

Witness the Honorable Edward C. O'Rear, Chief Justice of the Court of Appeals of Kentucky, this 13th day of July in the year of our Lord one thousand nine hundred and eight.

ED. C. O'REAR,
Chief Justice of the Court of Appeals of Kentucky.

I accept the service of this citation.
July 13, 1908.

JAS. BREATHITT,
Attorney General of Kentucky.

Filed July 13, 1908.
Att.:
NAPIER ADAMS, *C. C. A.*

364 THE COMMONWEALTH OF KENTUCKY,
The Court of Appeals, sct:

Pursuant to a writ of Error issued out of the United States Circuit Court for the Eastern District of Kentucky on the 11th day of July 1908 and directed to the Court of Appeals of Kentucky and in obedience to the command thereof, I Napier Adams, Clerk of the Court of Appeals of Kentucky, do herewith transmit to the Supreme Court of the United States a duly certified transcript of the record and all proceedings of this Court, in the within entitled cause, with

all things concerning the same, together with the original writ of Error and citation, with acceptance of service thereof hereto attached.

In Testimony Whereof, I have hereunto subscribed my name, and attached my official seal. Done at the Capitol at Frankfort on this the 3rd day of Aug. A. D., 1908.

[Seal Kentucky Court of Appeals.]

NAPIER ADAMS,
Clerk Court of Appeals of Kentucky.

Endorsed on cover: File No. 21,289. Kentucky court of appeals. Term No. 224. The Eastern Kentucky Coal Lands Corporation, plaintiff in error, vs. The Commonwealth of Kentucky. Filed August 5, 1908. File No. 21,289.

Supreme Court of the United States.

KENTUCKY UNION COMPANY, - - *Plaintiff in Error,*

VS. BRIEF FOR PLAINTIFF IN ERROR.

COMMONWEALTH OF KENTUCKY, - *Defendant in Error.*

STATEMENT.

This case is here on writ of error to the Court of Appeals of Kentucky. The majority decision of that court (there being a vigorous dissent by Judge Hobson) upholds the constitutionality of Article III, of an Act entitled "An Act Relating to Revenue and Taxation" passed by the Kentucky Legislature in the year 1906, and affirms a judgment forfeiting the title of plaintiff in error to a tract of land in Leslie County, Kentucky.

This article had for its purpose the forfeiture of land and its transfer to certain private individuals, where the owner or claimant had failed, prior to the passage of the act, to list it for taxation or to pay the taxes thereon, for the years 1901 to 1905 inclusive, or any three of such years. During the years named, the failure of the land owner to list his land for taxation or to pay the taxes thereon, was not punishable by a forfeiture of his land. It was only after the failure had occurred that it was made so punishable by Article III of the Act of 1906.

It is true that the owner of the land was given by this article the right to extinguish the cause of forfeiture in a certain manner and within a given time, but in the extinguishment of it he was penalized by being compelled to do acts and to pay penalties which he did not have to do or pay prior to the passage of the act. If he ignored the act, his land was forfeited absolutely for his omission prior to its passage; if he complied with the act, he was penalized in the complying.

At the outset, we would impress upon the Court that this Article is utterly unique in its scope and effect. An exhaustive search through the laws of other States has failed to reveal a similar law. It is evident that some of its form and phrasing was suggested by the West Virginia law which this court has had before it in King v. Mullins, 171 U. S. 420, and in the very recent case of King v. West Virginia, 216 U. S. 92 (decided January 31, 1910); but the resemblance between the West Virginia statute and the Kentucky statute is only superficial. The operation of the two statutes respectively upon the rights of the owner, and hence the questions of Constitutional Law raised by them, are radically different.

By virtue of Article III, the Commonwealth of Kentucky filed a petition in equity in the Leslie Circuit Court, making the Kentucky Union Company defendant, seeking to forfeit its title and claim to 40,000 acres of land in Leslie County, granted by the Commonwealth of Kentucky to Stephen G. Reid in 1872, and subsequently conveyed by *mesne conveyances* to that company—it being alleged in the petition that the defendant had

failed to list said land for taxation and had failed to pay the taxes thereon for the years 1901 to 1905, inclusive. The prayer of the petition and amended petition was for a judgment forfeiting and transferring to the Commonwealth of Kentucky, and ordering a sale of, all of defendant's claim, title, right and interest in and to the 40,000 acres of land. The defendant filed a general demurrer to the petition as amended, which the court overruled. A jury trial was had as provided by the Act, but this was a mere formality, as there was no issue to be tried by a jury, the demurrer having confessed the petition. The jury having returned a verdict for the plaintiff, the court entered a judgment adjudging, "that all of the right, title, interest and claim of the defendant, the Kentucky Union Company, in and to the following described tract of land, be and the same is now forfeited and transferred to the plaintiff, the Commonwealth of Kentucky, and that same shall be sold by this court's master commissioner as herein provided for." Then follows a description of the land and the terms upon which it is to be sold.

The defendant, Kentucky Union Company, appealed from this judgment to the Court of Appeals of Kentucky. That court advanced the case for oral argument on motion of the Commonwealth accompanied by a stipulation in which both parties requested the case to be advanced, and agreed as to the points and questions upon which they desired an oral argument, among which was, "whether said Article III is *ex post facto* and contrary to the Constitution of the United States" (R. 11-12). The case was orally argued on March 10 and

11, 1908, and on March 25, 1908, the court delivered an opinion holding Article III valid, and rendered the following judgment:

> "The court being sufficiently advised, it seems to them the judgment herein is erroneous in part.
>
> "It is therefore considered that said judgment be affirmed in so far as it adjudges a forfeiture of the title and claim of the appellant, but for reasons indicated in the opinion herein, and because it orders a sale of the land and not the forfeited title, said judgment is reversed and cause remanded for proceedings consistent with the opinion herein, which is ordered certified to said court." (R. 14).

In a petition for a rehearing filed by the Kentucky Union Company, it was urged that Article III of said Act violated the Constitution of the United States in the following respects: That it was an *ex post facto* law; that it impaired the obligation of contracts; that it deprived the appellant of its property without due process of law; and that it denied to appellant the equal protection of the laws. The court overruled this petition and in a response thereto (R. 30) decided that Article III of said act does not violate the Constitution of the United States in any of those respects. A writ of error was then allowed from this court as to so much of the judgment as forfeited the title and claim of appellant.

The errors relied upon by plaintiff in error are that the Court of Appeals of Kentucky erred in deciding that Article III of said Act, in so far as it provides for a for-

feiture of the title to land for failure to list and pay taxes thereon for the years 1901 to 1905, inclusive, or any three of such years, is not contrary to and in violation of Section 10, Article I, of the Constitution of the United States, which provides, "No State shall . . . pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, and is not contrary to Section 1 of the Fourteenth Amendment of the Constitution of the United States, which provides, 'Nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.' "

ARGUMENT.

Before taking up these constitutional questions it is important to consider the meaning and effect of the statute in question.

Article III of the act, entitled, "An Act Relating to Revenue and Taxation," is found on page 115 of the Acts of the General Assembly of the Commonwealth of Kentucky of 1906, and consists of ten sections.

In discussing this article we shall first take up those parts which provide for the forfeiture of the land, next those parts which provide for the extinguishment of the cause for forfeiture and, lastly, those parts which provide for the purchase back of the land by the owner after the judgment of forfeiture has been rendered. For the convenience of the court we have had printed under separate cover an appendix to this brief, containing Article III in full.

PROVISIONS OF ARTICLE III, RELATING TO THE FORFEITURE OF THE LAND.

Section 1, after making it the duty of each owner or claimant of land thereafter, in the manner provided in said article, to list for taxation, have assessed and pay the taxes which should have been assessed against him and those under whom he claims, together with interest and penalties imposed by that section for the years 1901, 1902, 1903, 1904 and 1905, provides:

> "If any such owner or claimant, or those under whom he claims, has failed to list such land for assessment for taxation, as of any three of said dates, or has failed to pay the taxes charged, or which should have been charged against him or those under whom he claims, as the owner or claimant thereof upon said dates, for any three of the years for which said assessments were, or should have been made, said owner and claimant and those under whom he claims are hereby declared to be delinquent; and such failures, or either of them, shall be cause for the forfeiture and transfer to the Commonwealth of his said claim and title thereto, in a proceeding to be instituted for that purpose, as hereinafter provided."

It will be observed that this section has now effected two results: first, it has made it the duty of every owner or claimant of land thereafter, in the manner provided in said article, to list that land for taxation and pay the

taxes thereon for the years 1901, 1902, 1903, 1904 and 1905, together with certain interest and penalties for which he was not liable before; second, although it is his duty *thereafter* to list and pay the taxes, such owner or claimant is declared *delinquent* for his past failure, or for the past failure of those under whom he claims, *theretofore* to list or pay the taxes prior to the Act of 1906; and such failure prior to the Act of 1906 is made a "cause for the forfeiture and transfer to the Commonwealth of said claim and title thereto."

Section 3 provides:

> "If any such owner or claimant shall fail to have said land assessed, or fail to pay the taxes charged, or which should have been charged against him, or those under whom he claims, as the owner or claimant of any such tract of land, as provided and within the time prescribed in Sections 1 and 2 of this article, together with the penalties and interest as provided by law, then it shall be the duty of the Commonwealth's attorney to institute in the circuit court of the county in which said land or any part thereof lies a proceeding in equity in the name of the Commonwealth of Kentucky as plaintiff against said tract of land, and the owners or claimants of said land as defendants, * * * for the purpose of declaring the title or claim of said defendants forfeited to this Commonwealth and selling same."
>
> * * * * * * * * *
>
> "The petition of the plaintiff shall allege the facts constituting the cause of forfeiture under the

provisions of this article, and there shall be filed with it a copy of the grant or instrument upon which the title or claim sought to be forfeited is based; and no other title, claim or possession, or continuity thereof, whether owned or claimed by the defendant or by others shall be forfeited or in any manner affected by said proceeding. The prayer shall be for a judgment of forfeiture and sale of the title or claim in the petition described.

"The court shall render judgment in accordance with the pleadings, exhibits and evidence adduced; and if it shall find that said title or claim sought to be forfeited is or has been subject to forfeiture under the provisions of this article, it shall render judgment declaring the same forfeited and the title thereto vested in the Commonwealth. Such judgment shall operate as a transfer to, and vesting in, the Commonwealth of the said title and claim of each and all the defendants, and those under whom they claim, without execution of deed or other instrument."

* * * * * * * * *

"Issues as to whether or not the title and claim sought to be forfeited is or has been subject to forfeiture under the provisions of this article shall be triable by jury; and the judgment of the court shall be in accordance with the verdict, as in ordinary actions."

The meaning of this section, to state it briefly, is that where the "cause for the forfeiture" has not been extinguished in the time and manner provided by Article

III, the Commonwealth's attorney is required to institute a suit which must necessarily result in a judgment forfeiting the land, which judgment operates to transfer and vest in the Commonwealth the title of the owner.

Section 6 provides that all title and claim forfeited to, and vested in, the Commonwealth and not purchased back by the owner or claimant "shall be, and is hereby, transferred to, and vested in, any person for so much thereof as such person, or those under whom he claims, has had the actual adverse possession for five years next preceding the judgment of forfeiture, under claim, or color of title, derived from any source whatsoever, and who, or those under whom he claims, shall have paid taxes thereupon for the five years in which such possession may have been or may be held; and in those in privity with such persons, his heirs, representatives and assigns, as to the mineral or other interests or rights in or appurtenant to such land."

This section transfers absolutely to the occupants the title to such parts of the forfeited land as the occupants have held actual possession of and paid taxes on for the five years next preceding the judgment of forfeiture.

Section 7 provides:

> "All title and claim to land transferred to, and vested in, the Commonwealth under the provisions of this article and not purchased back by the owner or claimant, as provided by Section 4, and not vested in the occupant, as provided in Section 6, shall be sold to the highest and best bidder for cash in hand."

This section then provides for the time and place of sale, that it shall be at public auction, and the manner in which it shall be advertised, and requires the commissioner to report the sale to the court, and the court, after confirmation of such report, to order the commissioner to make a deed to the purchaser. It then provides:

> "Such deed shall operate and transfer to such purchaser such title and claim to the land so forfeited and transferred to, and vested in, the Commonwealth as remains in it after the operation of Section 6 of this article, and shall so recite."

It will be observed that this section provides for the sale of only that remnant of the title or claim which has not been vested in the occupants as provided in Section 6. The Court of Appeals of Kentucky held, however, in this case that not even that remnant passed by the sale. It held that only such part of the land as was not in actual adverse possession would pass by the sale. It was claimed in this case that Article III, in effect, repealed the champerty statute. In answer to this, the Court of Appeals held that no part of the forfeited title which was in adverse possession passed by the sale. In concluding its opinion on this subject it said (R. 20):

> "If the occupant has had five years possession, coupled with the payment of taxes, the forfeited title devolves upon him; if he has not had posses-

sion for a sufficient length of time to cause a vesture of title in him, he nevertheless is in possession; and as a sale of the forfeited title to the extent of his possession would be champertous, the title thereof remains in the Commonwealth, and the possession of such occupant, or the continuity thereof, is not in any manner affected thereby. The title to those parts not transferred to the occupant, or which is not adversely held, is alone the subject of sale, and the title to only such parts would pass upon a sale in gross."

Section 7 provides for the distribution of the money realized by the sale as follows:

> "First, to the payment of the costs of the suit, including commissioner's fee as fixed by law and a reasonable attorney's fee, to be fixed by the court and paid in the manner provided by law; second, to the county and State the proportion to which each may be entitled, together with interest and penalty, as in this article provided; third, the remainder shall be paid over to the former owner or claimant or his personal representative or assigns."

In view of the construction placed on Article III by the Court of Appeals in this case, the provision that the "remainder shall be paid over to the former owner" is of no real benefit to him whatever. It was urged in that court, in the case at bar, that the petition should allege, and the judgment of sale ascertain, how much of the title or claim forfeited enures to the benefit of the

occupants as provided for in Section 6, for if the former owner is entitled to the remainder of the proceeds of sale after the payment of the costs and taxes for which the land is ordered sold, then it would seem to follow that as to the part of his claim which does not enure to the benefit of the occupants, the intention of the article is simply to give the Commonwealth a lien, and that the former owner is still the owner of that part, subject to that lien. It was further urged in that court that it is not fair to the owner to sell a part of his land or title which is not made definite by the judgment; that a bidder at such sale would have no way of determining for himself how much of the title enures to the benefit of the occupants under Section 6, and therefore would have no way of determining how much of the title he was bidding upon, or what was the value of the remnant of such title upon which he was to bid; that this would be a great injustice to the owner, as a bidder, bidding upon an unknown quantity, would necessarily be prevented from bidding more than a nominal amount. The court rejected this view *in toto*. It said (R. 17):

> "Appellant contends that, if the act is constitutional, the petition is defective and that the general demurrer thereto should have been sustained, because the petition fails to disclose what parts, if any, of the land described in the petition is held by occupants who have paid taxes thereupon for the five years preceding the judgment of forfeiture; and that the judgment is erroneous because it does not segregate the parts to which the forfeited title would enure.

"So far as disclosed by the record, there is no part of the tract held by occupants. But the court judicially knows, and it was admitted in argument, that practically, if not quite, all the land described in the petition is adversely held by occupants under claim or color of title. The record shows only that the appellant is the owner or claimant of the title to the tract of land, which is specifically described, by metes and bounds, courses and distances, and that appellant has failed to comply with the provisions of the article with respect to listing of it for taxes, and the payment of taxes thereon. The petition contains all the allegations necessary to show that appellant was delinquent, and its title subject to forfeiture, and the demurrer thereto was, therefore, properly overruled. Nor is the judgment erroneous on that ground. Certainly the title to the tract of land described in the petition, and which is adjudged to be subject to forfeiture and sale can be sold by the same description, the purchaser taking that which, under the article, passes at the sale. The doctrine of *caveat emptor* applies in this, as in other proceedings. And the purchaser, and not the occupant, as urged by counsel for applicant, would be required to show, in actions to recover under his purchase, that the land claimed by him was not of the excluded class.

* * * * * * * * *

"We have no hesitancy in holding that it is not necessary for the judgment to ascertain and describe the parts of the tract held by occupants."

It is thus seen that the provision of Section 7, turning over to the former owner the proceeds of the sale of that undetermined remnant of land, not transferred to the occupants under the operation of Section 6, and not in adverse possession at the time of the sale, after paying out of those proceeds, the costs, attorney's fees and taxes, is of no practical benefit to him whatever, and does not relieve, to any material degree, against the forfeiture of his title.

PROVISIONS OF ARTICLE III RELATING TO THE EXTINGUISHMENT OF THE CAUSE FOR FORFEITURE.

We shall next consider those provisions of Article III, which allow the land-owner to extinguish the cause for forfeiture.

Section 1 provides for such extinguishment in these words:

> "But said cause for forfeiture shall be extinguished if said owner or claimant, his heirs, representatives, or assigns, shall, within the time and in the manner in this article provided, cause said land to be assessed for taxation, and, on or before March 1, 1907, pay the taxes charged, and which should have been charged against him, or against those under whom he claims, as the owner or claimant thereof, for each and all of said five years, for which he or those under whom he claims are delinquent, *together with the interest and penalties provided by law in case of the redemption of land sold for the non-payment of taxes.*"

Section 2 provides for the time and manner of extinguishing the cause of forfeiture as follows:

> "The ascertainment of the amount of taxes unpaid and the assessments required by the preceding section shall be made by the county court of the county wherein the land lies, upon the application of said owner or claimant, *by a petition verified by himself or his agent, filed in said court on or before January 1, 1907, in which the land sought to be charged shall be described so as to be identified,* and the years for which it was not listed, and the years in which the taxes were not paid shall be stated, and in which also shall be stated the grant under which he claims, if he derives title from a grant, and the instrument through or the manner in which the title devolved upon him.
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> * * * * * * * * *
>
> "It shall be the duty of the county court to decide upon said application in a summary manner, upon such evidence as may be offered, having due regard to the value of adjacent property as of said dates, and to ascertain the amount of unpaid taxes which the appellant and those under whom he claims should have paid for any and all of said years, whether assessments were originally made as of said dates or not."

These are the only provisions in Article III for preventing the forfeiture, or as the article says, for "extinguishing" its cause. They impose two different kinds of penalties on the land owner. First, he is required to pay not

only the taxes charged "and which should have been charged against him," but is required to pay those taxes "together with the interest and penalties provided by law in case of the redemption of land sold for the non-payment of taxes."

Second, he is required to file in the county court on or before January 1, 1907, a petition sworn to by himself or agent, "in which the land sought to be charged shall be described so as to be identified."

As to the first of these requirements—If the Act of 1906 had not been passed, the owner or claimant could, in 1906, have listed his lands for taxation for the years 1901 to 1905, and have paid the taxes thereon without any interest or penalty whatsoever; or if he did not voluntarily list his lands, as it was his duty to do, then *Section 4241, Kentucky Statutes* (1903 Edition), made it the duty of the sheriff or auditor's agent to cause such omitted lands to be assessed by filing a statement in the county court showing the omitted property, and the county court would then have assessed the omitted lands, and the owner or claimant would have been required to pay the taxes as assessed and 20 per cent. penalty which went to the sheriff or auditor's agent.

Section 4021, Kentucky Statutes (1903 Edition) provides:

> "When any lands or improvements shall not be assessed in any one year, it may be assessed retrospectively, in the manner provided by law, for that year, at any time not later than five years thereafter."

In Citizen's National Bank of Lebanon v. Commonwealth, 118 Ky. 51; Chicago Railroad v. Commonwealth, 115 Ky. 278, and Commonwealth v. Nute, 115 Ky. 239, the Court of Appeals held that the State is barred by limitation from having lands assessed after the expiration of five years.

If, then, the sheriff or auditor's agent did not file the statement of the omitted property within the five years mentioned in Section 4021, the right of the State to those taxes was gone and the owner of the omitted land was not punishable in any way whatever for failing to list it or to pay the taxes on it. The owner then, by his failure to list his land, *contingently* made himself liable to pay a penalty of 20 per cent., *in the event* that the sheriff or auditor's agent caused the land to be assessed within the prescribed time; and this was the utmost measure of his liability under the law as it existed prior to the Act of 1906.

Under Article III of the Act of 1906, however, the past omissions of the owner are made a cause for the forfeiture of his land, and in order to extinguish that cause, the owner is required to pay the taxes for the omitted years "together with the interest and penalties provided by law in case of the redemption of land sold for the nonpayment of taxes." That interest and that penalty are found in Section 4152, Kentucky Statutes (1903 Ed.), which provides that the owner may have a right to redeem "from the State, or any other purchaser at any time within two years after the date of sale, by paying the purchase money, with interest at the rate of 30 per cent. per annum, and in addition 15 per cent. upon the total amount of the purchase price and the amount of the Clerk's costs, if any."

It is perfectly clear that the requirement to pay this 30 per cent. interest and 15 per cent. penalty did not exist against the owner of land omitted from assessment prior to the Act of 1906. It is plain, under the tax laws then in force, that his land could not be sold for taxes until it had been assessed; and as there had been no assessment, there, of course, was no sale and there could be no redemption. The owner of omitted land was therefore not liable, prior to the Act of 1906, for this 30 per cent. interest and 15 per cent. penalty; but, to extinguish the cause for forfeiture, Article III required him to pay something he was not liable to pay before, namely, 30 per cent. interest and 15 per cent. penalty. So, prior to the Act of 1906, the owner of omitted land could voluntarily assess it and pay the back taxes without the payment of any interest or penalty. Under Article III of the Act of 1906, the owner of land omitted for the years 1901 to 1905, or any three of them, could voluntarily assess it and pay the back taxes only upon the payment of 30 per cent. interest and 15 per cent. penalty.

As to the second requirement for extinguishing the cause for forfeiture—that the land shall be described so that it can be identified—this seems innocent enough in itself, but in reality it is "loaded"—it is more of a penalty than the first requirement.

When it is considered that Article III was directed against the mountain region of Eastern Kentucky, where, as shown by the opinions of the Court of Appeals of Kentucky, a large part of that territory consists of "wild land," where the titles are very much mixed and confused; where the patents overlap each other and are

piled one on top of another, in some instances as many as four deep; where a great many of those patents exclude large numbers of acres without describing the exclusions so that the land granted can not be identified by the patent description alone; where practically all of the large patents are in part at least, and have been for more than fifteen years (the period limiting the recovery of lands in Kentucky) in the actual, adverse possession of others—then it can be readily seen that the Legislature was imposing a task, if not impossible, at least impracticable, of performance, when it required the claimants of these patents to describe what they owned, so that it could be identified, within the time limited by the act—that is prior to the first of January, 1907. As the Act of 1906 was approved by the Governor on the 15th of March, 1906, it gave the claimants of these patents a little more than nine months to do the work necessary to get up the required descriptions. And it made no difference that these claimants were infants, lunatics, married women or non-residents. It is at least doubtful if the necessary investigation and surveying could have been completed within that time. Assuming that the descriptions could have been gotten up in the time given, it is evident that they could have been so gotten up only by the expenditure of a considerable sum of money in having investigated the parts of each patent to be excluded and in surveying out such parts so that they might be identified. That the requirements of Article III called for a description necessitating such investigation and surveying was expressly held by the Court of Appeals of Kentucky in the case of Eastern Kentucky Coal Lands Corporation

v. Commonwealth, 127 Kentucky, 667. That was the first case in which Article III came before that court for consideration. There the Eastern Kentucky Coal Lands Corporation, was attempting to comply with the requirements of that article, and thus extinguish the cause for forfeiture. It had, prior to January 1, 1907, filed in the county courts of the Counties of Pike, Floyd, Letcher and Knott, petitions seeking to have assessed for the years 1901 to 1905, inclusive, 447,528 acres of land contained in 35 grants from the Commonwealth of Virginia, the outside boundaries of which were described. The lands which had been held adversely within these grants for a period of more than fifteen years were not described. The Court of Appeals affirmed the judgment of the lower courts dismissing these petitions and refusing to allow the lands to be assessed. The opinion in that case shows that Article III was directed against the mountain region of Eastern Kentucky, and that the lands owned by the claimants had to be described as stated above.

After commenting on the wretched land system which prevailed in Virginia and was brought over from it to Kentucky, the court said, page 688:

> "As new counties came to be formed, as they were rapidly enough, new county seats, with new offices and new records (without provision for transcribing the old in so far as they affected the new counties), were created, and were doubtless most generally supposed to contain all necessary data for the guidance of the settlers in taking up and conveying land. It resulted that new patents were is-

sued for lands already appropriated by previous grants. In many instances several patents overlapped the same land. This went on with little change for nearly a hundred years * * * It now develops, and has been known for some time, that all or most of the vast territory lying to the Northwest of the Cumberland Mountains and west of the Tug Fork of the Big Sandy River, to a point west of the main Kentucky River, was appropriated under entries and surveys made by virtue of the laws of Virginia before the separation in 1792. Few of those entries were ever settled upon. So far as the new settlers knew in fact, in every probability, the lands were unappropriated. The generations of a century have thus increased, and by actual occupancy, by personal industry and thrift, and by all the means by which the Americans create a Commonwealth, they have fastened themselves to the soil in the belief that they have inherited it from their fathers, or purchased it honestly from their neighbors, and that it is theirs.

"Notwithstanding that millions of acres have thus been reduced to that kind of actual possession and for such a period as to ripen into a perfect title in spite of its original state, and that the population of this territory is now more than 300,000, there are many hundred thousand acres of these lands unfenced, whose stores of mineral and mantles of forest have remained in their natural state until the present hour."

The opinion then shows that this condition of titles and the failure of the owners of large grants in this territory to pay the taxes thereon was directly responsible for the enactment of Article III of the Act of 1906.

In declining to permit the Eastern Kentucky Coal Lands Corporation to have assessed the lands described in its petitions on the ground that they were not so described that they could be identified, the court said (page 719):

> "(2) They do not 'so describe the land proposed to be assessed' as that, in the language of the statute, 'it can be identified'—the land to be assessed in not only specific tracts, so described in their entirety as to be susceptible of accurate location, but the interest of the listing owner, if he owns less than the entire tract, must be so described as that it may be identified. (3) Some of the patent boundaries described lie only partly in the county wherein it is proposed to list it. The petitions show that fact, but do not show where, in what part of the county, the parts to be assessed do lie; nor do they show where the excluded parts which it is admitted do not belong to the petitioner lie, so as that the court could with reasonable certainty and intelligence fix a valuation upon that part which is assessed. For lands which lay upon the main Big Sandy River, in Pike County, would have a much greater cash value than if they lay across a mountain range miles away from a navigable river or a railroad. If the claimant does not own the whole tract described, he must show what

portion he does own or claim. A failure to so describe exclusions as that they may be identified leaves the description as indefinite as if the original tract could not be identified. * * *

"The purpose of the Legislature was to enforce, under the extreme penalty of forfeiture for failure, such a listing of the property as would in the future prevent its escape from taxation, as it had been enabled to do in the past because of statutes so loosely drawn as that no title would pass in case of default; * * * It does not answer to say that the taxpayer did not know his property or its description. He is required to know it, and to furnish it, so as the property may be certainly identified from it; nor is it an answer to say that it would be too expensive for him to make the necessary investigation."

It is perfectly clear from the above quotation that, in order to extinguish the cause for forfeiture, Article III required the claimant of land, in the mountain region of Eastern Kentucky, to describe, so that it could be identified, the land owned by him, to do whatever investigating and surveying was necessary in order to obtain descriptions of any exclusions not owned by him, and to do the necessary surveying to show what parts lie in one county, and what parts lie in another county, and the acreage and location in these counties.

In the case just quoted from, where it was shown that the 447,528 acres sought to be listed had been in large part held adversely for a period sufficient to ripen into title, the Eastern Kentucky Coal Lands Corporation was required by Article III, as construed in that case, to

survey out those adverse titles so that they could be identified.

In the case at bar the Court of Appeals said (R. 17):

> "But the court judicially knows, and it was admitted in argument, that practically, if not quite, all the land described in the petition is adversely held by occupants under claim or color of title."

Article III then required an investigation by plaintiff in error of these adverse claims to determine and to survey out those parts which had ripened into title. As the actual possession of an adverse claimant who enters on land in Kentucky, is not confined to his close or fence, but extends to the full limits of his claim, whether he has color of title or only a marked boundary (*Campbell* v. *Thomas*, 9 B. Mon. 82; *New Domain Oil & Gas Co.* v. *Gaffney Oil Co.*, 121 S. W. 699, decided by the Court of Appeals of Kentucky, October 14, 1909), it can be appreciated that the task imposed on plaintiff in error of describing so that it could be identified each adverse claim which had ripened into title within this Reid grant was extremely difficult, as well as expensive. It meant an investigation conducted on the land itself to ascertain each adverse claim and a survey of it where it had been held for fifteen years or more.

Article III also required plaintiff in error to ascertain and survey out 6,000 acres which, by the terms of the grant under which it claimed, were excluded but not described. A copy of this grant was filed with the petition in this case and is on page 4 of the record. It describes the land granted as follows:

"A certain tract or parcel of land, containing 46,000 acres, by survey, bearing date the 9th day of January, 1872, lying and being in the county of Perry and bounded as follows, to-wit: Beginning on a white oak, black oak and rock on top of the point between the mouth of the Pounding Mill Branch and Rockhouse Branch of Cutshin Creek of the Middle Fork of the Ky. River; thence base line S. 55 W. 200 poles to a black pine; thence N. 35 W. 736 poles to a stake; thence S. 55 W. 1,000 poles to a stake; thence S. 35 E. 336 poles to a beech on the base line; thence S. 55 W. 100 poles to a beech and maple on the north side of Middle Fork River; thence S. 35 E. 736 poles to a stake; thence S. 55 W. 460 poles to a stake; thence S. 5 E. 950 poles to a beech and elm at the mouth of Round Hole Branch of the Greasy Fork; thence N. 74 E. 2,472 poles, passing Bonnet Rock to a sourwood and beech on the point below Jesse Maggard's and on the north side Cutshin Creek; thence N. 55 E. 1,000 poles to a stake; thence N. 35 W. 1,672 poles to a stake; thence N. 55 E. 300 poles to a stake; thence N. 35 W. 1,104 poles to a stake; thence S. 55 W. 1,000 poles to a stake; thence S. 35 E. 368 poles to a stake; thence S. 55 W. 400 poles to the beginning. *Six thousand acres of land is deducted from this calculation of this boundary which is supposed to cover the patented land in this boundary of Block No. 1.*"

It is seen from this description that there is deducted from the 46,000-acre boundary 6,000 acres of land with-

out describing it. Grants like this are not void for uncertainty, but have been repeatedly held valid by the Court of Appeals of Kentucky. In *Ballowe, etc., v. Hillman,* etc., 18 Ky. L. R. 677, 37 S. W. 950, the patent granted 8,000 acres. Its outside boundary included about 75,000 acres. The patent "excluded all those surveys of land to which there is now a lawful title." This patent was held not void for uncertainty of description, but valid. In *Breathitt Coal, Iron & Lumber Co.* v. *Strong,* 106 Ky. 699, the outside boundary of the patent contained 154,800 acres of land. From it there was excluded, without describing it, 25,000 acres "of patented and otherwise appropriated land, which is deducted from the calculation." The court said: "The only question which merits consideration is whether the patent is void by reason of its failure to describe the *excluded* boundaries." The court held the patent valid. In *Kidd* v. *Central Trust & Safe Deposit Co.,* 23 Ky. L. R. 1402, 65 S. W. 355, the patent excluded 25,000 acres of previously patented land without describing it. It was held that the patent was valid. In *Helton* v. *Central Trust & Safe Deposit Co.,* 24 Ky. L. R. 628, 69 S. W. 720, lands were excluded from the patent without being described—the acreage not given by the opinion. The patent was held valid. In *Bryant* v. *Kendall,* 25 Ky. L. R. 1859, 79 S. W. 186, the exclusions were described as follows: "Plotting out of the survey all lands heretofore surveyed." The patent was held valid. In *Goff* v. *Lowe,* 25 Ky. L. R. 2176, 80 S. W. 219, the patent granted 1,000 acres, but excluded, without describing it, "2,700 acres of former patented land, which is excluded in the calcu-

lation of the preceding plat." The patent was held valid. In *Steele* v. *Bryant,* 116 S. W. 755 (decided March 5, 1909), the patent purported to grant 10,000 acres of land. Its outside boundary contained 140,000 acres. The exclusions were: "Plotting out of this survey all lands heretofore surveyed." The older surveys contained about 120,000 acres, which were excluded. The patent was held valid as a grant of about 20,000 acres. Other cases decided by the Court of Appeals of Kentucky might be cited holding similar patents valid.

It follows from these decisions that the description contained in the patent in the case at bar is sufficient to identify the land for the purpose of a valid grant. While admittedly sufficient for that purpose, or for the purpose, under Article III, of the forfeiture and sale of the land granted, yet it is not sufficient under that article for the purpose of extinguishing the cause for the forfeiture of that very same land. The plaintiff in error was required by Article III, as construed by the Court of Appeals of Kentucky, to ascertain and survey the 6,000 acres of exclusions. In order to have ascertained the 6,000 acres of older patents which were excluded by the Reid patent, plaintiff in error would have been compelled to send an expert to the Land Office at Frankfort, Kentucky, where all patents are recorded, to make a search from the beginning of the records down to 1872, the date of the Reid patent, for older patents which lie in the vicinity of the Reid patent, and might lie wholly or partly within the lines of that patent. As the State of Kentucky never had the section system of the Western States, as a person desiring a patent could get it in any

imaginable shape desired, as such patent might contain any number of acres, large or small, and as the boundaries of such patents are usually trees, stakes or streams, it is evident that such investigation in the Land Office would have been no simple, easy or inexpensive matter.

It is further evident that plaintiff in error would have been compelled to have had surveyed a large number of the older patents in the vicinity of the Reid patent which might or might not be a part of the 6,000 acres excluded, depending on whether such patents extended into the Reid patent or not quite to it.

In locating these exclusions it would also probably be necessary to resurvey the outside lines of this grant, for most of its corners are stakes, and it is doubtful, to say the least, if it could be ascertained where any overlapping patent lay with reference to these lines or what part of such overlapping patent was within or what part without those lines, except by a resurvey of them. As those lines are 12,834 poles in length, or a little more than 40 miles, it is seen that to resurvey them alone is no small undertaking.

As we have seen, the Court of Appeals has said:

> "It does not answer to say that the taxpayer did not know his property or its description. He is required to know it, and to furnish it, so as the property may be certainly identified from it; nor is it an answer to say that it would be too expensive for him to make the necessary investigation."

Yet, prior to the Act of 1906, the taxpayer was not required to know his property nor its description further

than was contained in the grant to him. He was not required prior to the Act of 1906 to survey out the exclusions in order to have his property assessed. He was not required prior to the Act of 1906 to survey out the adverse claims in order to have his property assessed. All that he was required to do was to "state separately the tracts of land, the number of acres in each tract and the improvements thereon, the name of the nearest resident thereto and where situated, giving election precinct in which it is situated." (*Ky. Stats., 1903 Ed., Sec. 4056*). He was required to give this on a printed schedule furnished by the assessor. That printed schedule is a part of *Kentucky Statutes* (*1903 Ed.*), *Sec. 4058*, and is as follows:

SCHEDULE.

No. of Item.	Description of Property.	Value fixed by the person assessed.	Value fixed by the Assessor.
1.	Amount of bonds, number and denomination of bond and value thereof	$	$
2.	Amount of notes secured by mortgage	$	$
3.	Amount of other notes	$	$
4.	Amount of accounts	$	$
5.	Amount of cash on hand	$	$
6.	Amount of cash on deposit in bank	$	$
7.	Amount of cash on deposit with other corporations	$	$
8.	Amount of cash on deposit with individuals	$	$
9.	Amount of all other credits or money at interest	$	$
10.	Amount of stock in joint stock companies or associations of this State not paid on by the Company or associations	$	$
11.	Amount of stock in foreign corporations	$	$
12.	Number of acres of land		
13.	Nearest residence thereto		
14.	Election precinct in which situated		
15.	Valuation of each tract with improvements	$	$
16.	Number of city lot or town lots		
17.	Name of town or city where located		
18.	Value of each with improvements	$	$

This was all that the owner of land was required to do to have it assessed prior to the Act of 1906. And even under the Act of 1906, as to future assessments, the old law was substantially followed. Thus Article II, Section 16, page 101, of the Acts of 1906 provides:

> "Persons listing their estates with the assessor shall state separately the tracts of land, the number of acres in each tract, the price per acre and the improvements thereon, the name of the nearest resident thereto and where situated, giving election precinct in which it is situated."

And the schedule is practically the same as that of the old law, the part relating to land, being as follows (Acts of 1906, page 104):

12.	Number of acres of land and price per acre--$		$
13.	Nearest resident thereto----------		
14.	Election precinct in which situated----------		
15.	Valuation of each tract with improvements--$		$

It is evident that the only description required as to years other than 1901 to 1905, inclusive, was a statement of the number of tracts, their acreage, the nearest resident and the election precinct in which situated.

It thus apears that the requirement of Article III as to describing the land so that it could be identified applied only to those claimants who might attempt to extinguish the cause for forfeiture created by that article. It did not apply to any other assessment of land, past, present or future. Its purpose was to penalize those claimants in the extinguishment of the cause of forfeiture

and to prevent them, as far as possible, from extinguishing such cause. As said by the Court of Appeals in Eastern Kentucky Coal Lands Corporation v. Commonwealth, 127 Ky. on page 697:

> "There can be no doubt that the Legislature determined to outlaw these dormant titles * * *."

PROVISIONS OF ARTICLE III RELATING TO THE PURCHASE BACK FROM THE COMMONWEALTH OF THE FORFEITED LAND.

We will next consider those provisions of Article III which permit the land-owner to purchase back from the Commonwealth the forfeited title.

Section 4 of Article III provides:

> "If, before or during the term of the circuit court next succeeding the term at which a judgment of forfeiture may have been entered, as authorized by Section 3 of this article, any of the said defendants in privity with the title so forfeited to, and vested in the Commonwealth, file his counterclaim in said action, accompanied by a bond with good and sufficient resident personal security, to be approved by the court, if in session otherwise by the clerk of the court, conditioned to pay, and in all respects abide by and perform, the judgment that the court may enter upon such counterclaim, and in said coun-

terclaim offer to purchase back from the Commonwealth the title and claim in said action so forfeited to, and vested in the Commonwealth, * * * it shall be the duty of the court * * * to ascertain and adjudge the amount of unpaid taxes charged, and that ought to have been charged, against the defendant and those under whom he claims, as the owner or claimant of said land, for fifty years immediately preceding the filing of said counterclaim, and if the court finds and adjudges that said defendant is the owner of the title so forfeited to and vested in the Commonwealth, to enter a judgment against such defendant for a sum equal to the amount of the unpaid taxes charged, and that ought to have been charged, against said defendant, and those under whom he claims as the owner or claimant of said land, for said fifty years, together with interest thereupon at the rate of 15 per cent. per annum from the time of the said unpaid taxes for said several years were due, and the costs of the proceedings, including a reasonable attorney fee for the Commonwealth's attorney, to be fixed by the court.

* * * * * * * * *

"If, thereupon, such defendant shall pay to the sheriff the amount of such judgment, it shall be the duty of the court to enter a judgment retransferring to said defendant the title and claim so forfeited to, and vested in, the Commonwealth; and said judgment shall have the effect of retransferring and vesting same in said defendant without the execution of a deed or other instrument."

No argument is needed to show that this provision does not in any way relieve against the forfeiture. The owner is invited to submit himself to the jurisdiction of the court for the purpose of having rendered against him a personal judgment "for a sum equal to the amount of the unpaid taxes charged, and that ought to have been charged against said defendant, and those under whom he claims as the owner or claimant of said land, for said fifty years, together with interest thereupon at the rate of 15 per cent. per annum from the time of the said unpaid taxes for said several years were due, and the costs of the proceedings, including a reasonable attorney fee for the Commonwealth's attorney, to be fixed by the court." There is no way for the owner to know what the amount of this judgment will be when he submits himself to the jurisdiction of the court for the purpose of having it rendered against him. This provision of Article III is not a redemption, but is what it says it is—a "purchase back from the Commonwealth"—and does not afford any relief against the forfeiture.

There are no other provisions in the Act of 1906 which even make a pretense of relieving against the forfeiture.

SUMMARY OF EFFECT OF ARTICLE III.

The effect of Article III of the Act of 1906, to state it briefly, is:

1. It makes a failure of the land-owner, or those under whom he claims (prior to the passage of the act) to list or pay taxes for the years 1901 to 1905, inclusive, or any three of those years, cause for the forfeiture of his land.

2. If that cause for forfeiture is not extinguished in the time and manner provided by Article III, it becomes the duty of the Commonwealth's attorney to institute a suit for the purpose of having the land adjudged forfeited.

3. The judgment of forfeiture follows as a necessity from the existence of the cause for forfeiture and operates to transfer to the Commonwealth the title of the owner.

4. The title forfeited is by operation of law transferred to and vested in any person for so much of the land as such person, or those under whom he claims, has had the actual, adverse possession for five years next preceding the judgment, and who, or those under whom he claims, shall have paid taxes thereupon for such five years.

5. It requires a sale of the forfeited title, but only those portions pass by the sale which are not transferred to and vested in the occupants and which are not in adverse possession at the time of the sale. Neither the remnant passing by the sale, nor the portions which do not pass, are described in the judgment or advertisement; so any bidder at the sale would bid on an unknown quantity.

6. The proceeds of the unknown remnant so sold, if there are any proceeds, are distributed, first, in the payment of costs and attorneys' fees; second, in the payment of the taxes; third, the balance, if any, goes to the former owner.

Article III provides only one way of averting the forfeiture, and that is by extinguishing its cause. In

order to extinguish the cause for forfeiture the land-owner is required to follow two courses of action:

1. To file his verified petition on or before January 1, 1907, describing the land so that it can be identified. As has been heretofore shown, if this could be done in the time given, yet it could only be done at a very large expense in some cases disproportionate to the value of the land.

2. To pay the taxes on or before March 1, 1907, for the years 1901 to 1905, inclusive, together with 30 per cent. interest and 15 per cent. penalty.

As heretofore shown, both of these requirements are penalties, for which the land-owner was in no way liable at the time of his failure to list his land and pay the taxes thereon.

The effect of Article III, then, is to punish the land-owner in one of two ways for an omission on his part or on the part of those under whom he claims, which was not so punishable at the time it occurred. He is punished by the forfeiture of his land, or he is punished by the penalties imposed in extinguishing the cause for forfeiture. There is no escape for the land-owner from one or the other of these punishments.

ARTICLE III, OF THE ACT OF 1906, IS AN EX POST FACTO LAW AND CONTRARY TO THE CONSTITUTION OF THE UNITED STATES.

It has been uniformly held by this court that the provision in the Constitution of the United States, "No State shall * * * pass any * * * *ex post facto* law," embraces statutes imposing penalties and forfeitures, as well as

those imposing punishments for declared crimes; and this court has further held that the form of the statute is not material, that if it really inflicts a penalty, no matter what its form, it comes within the prohibition of the Constitution. Judge Cooley, in his work on *Constitutional Limitations, 5th Edition, page 323*, referring to this provision of the Constitution, says:

> "It is not essential, however, in order to render a law invalid on these grounds, that it should expressly assume the act to which it relates to be criminal, or provide for its punishment on that ground. If it shall subject an individual to a pecuniary penalty for an act, which, when done, involved no responsibility, or if it deprive a party of any valuable right—like the right to follow a lawful calling—for acts which were innocent or at least not punishable by law when committed (Cummings v. Mo., 4 Wall. 277), the law will be *ex post facto* in the constitutional sense, notwithstanding it does not in terms declare the acts to which the penalty is attached criminal."

In *Fletcher* v. *Peck*, 6 Cranch, 87, this court held, Chief Justice Marshall writing the opinion:

> "The State Legislatures can pass no *ex post facto* law. An *ex post facto* law is one which renders an act punishable in a manner in which it was not punishable when it was committed. Such a law may inflict penalties on the person, or may inflict pecun-

iary penalties which swell the public treasury. The Legislature is then prohibited from passing a law by which a man's estate, or any part of it, shall be seized for a crime which was not declared, by some previous law, to render him liable to that punishment. Why, then, should violence be done to the natural meaning of words, for the purpose of leaving to the Legislature the power of seizing, for public use, the estate of an individual in the form of a law annulling the title by which he holds that estate? The court can perceive no sufficient grounds for making this distinction. This rescinding act would have the effect of an *ex post facto law*. It forfeits the estate of Fletcher for a crime not committed by himself, but by those from whom he purchased."

In *Watson* v. *Mercer*, 8 Peters, 110, the court said:

"Now, it has been solemnly settled by this court that the phrase, *ex post facto* law, is not applicable to civil laws, but to the penal and criminal laws, which punish a party for acts antecedently done which were not punishable at all, or not punishable to the extent or in the manner prescribed. In short, *ex post facto* laws relate to penal and criminal proceedings which impose punishment or forfeiture, and not to civil proceedings which affect private rights retrospectively. The cases *Calder* v. *Bull*, 3 Dall. Rep. 386; *Fletcher* v. *Peck*, 5 Cranch's Rep. 138; *Ogden* v. *Saunders*, 12 Wheaton Rep. 266; and *Satterlee* v. *Mathewson*, 2 Peters Rep. 380, fully recognize this doctrine."

In *Cummigs* v. *Missouri*, 4 Wall. 277, the Constitution of Missouri imposed a test oath, and deprived ministers of the Gospel of the right to preach their religion, professors and teachers of the right to teach in schools, attorneys and counsellors at law of the right to practice their profession, until they had taken such oath. Many of the tests required by this oath were not offenses at all at the time of their commission. It was held in that case, that this requirement of the Constitution of Missouri was *ex post facto* and void. The court said, pages 320, 321:

> "The disabilities created by the Constitution of Missouri must be regarded as penalties—they constitute punishment. We do not agree with the counsel of Missouri that 'to punish one is to deprive him of life, liberty, or property, and that to take from him anything less than these is no punishment at all.' The learned counsel does not use these terms—life, liberty and property—as comprehending every right known to the law. He does not include under liberty freedom from outrage on the feelings as well as restraints on the person. He does not include under property those estates which one may acquire in professions, though they are often the source of the highest emoluments and honors. The deprivation of any rights, civil or political, previously enjoyed, may be punishment, the circumstances attending and the causes of the deprivation determining this fact. Disqualification from office may be punishment, as in cases of conviction upon impeachment. Disqualification from the pursuits of a lawful vocation, or from

positions of trust, or from the privilege of appearing in the courts, or acting as an executor, administrator, or guardian, may also, and often has been, imposed as punishment * * *.

"'Some punishments' says Blackstone, 'consist in exile or banishment, by abjuration of the realm or transportation; others in loss of liberty by perpetual or temporary imprisonment. Some extend to confiscation by forfeiture of lands or movables, or both, or of the profits of lands for life; others induce a disability of holding offices or employments, being heirs, executors, and the like.'"

At page 325, the court said further:

"The Constitution deals with substance, not shadows. It's inhibition was leveled at the thing, not the name. It intended that the rights of the citizen should be secure against deprivation for past conduct by legislative enactment under any form, however disguised. If the inhibition can be evaded by the form of the enactment, its insertion in the fundamental law was a vain and futile proceeding."

The cases of *ex parte Garland*, 4 Wall. 333, and *Pierce* v. *Carskadon*, 16 Wall. 234, were decided on the authority of Cummings v. Missouri, *supra*.

In *Locke* v. *City of New Orleans*, 4 Wall. 172, 174, the court said:

"*Ex post facto* laws embrace only such as impose or affect penalties or forfeitures; they do not include

statutes having any other operation. The term *ex post facto*, literally construed, would apply to any act operating upon a previous fact, yet the restricted sense stated is the one in which it has always been held. It was the sense in which it was understood at the time the Constitution was adopted, both in this country and in England. 1 *Blackstone*, 46; *Calder* v. *Bull*, 3 Dall. 390."

In *Burgess* v. *Salmon*, 97 U. S. 381, this court said:

"An *ex post facto* law is one which imposes a punishment for an act which was not punishable at the time it was committed, or a punishment in addition to that then prescribed. *Carpenter, et al.*, v. *Commonwealth of Pennsylvania*, 17 How. 456.

"Had the proceeding against Salmon & Hancock been taken by indictment instead of suit for the excess of the tax, and the one was equally authorized with the other, the proceeding would certainly have fallen within the description of an *ex post facto* law.

"In *Fletcher* v. *Peck* (6 Cranch, 87) it was decided that an act of the Legislature by which a man's estate shall be seized for a crime which was not declared to be an offence by a previous law, was void.

"In *Cummings* v. *Missouri* (4 Wall. 277) it was held that the passage of an act imposing a penalty on a priest for the performance of an act innocent at the time it was committed, was void.

"To the same purport is *Pierce* v. *Carskadon*, 16 Wall. 234.

"The cases cited hold that the *ex post facto* effect of a law can not be evaded by giving a civil form to that which is essentially criminal. *Cummings* v. *Missouri, supra; Potter's Dwarris, 162, 163, note 9.*"

There can be no doubt that Article III, under consideration, is a penal law and comes within the prohibition of the Constitution of the United States. The Court of Appeals of Kentucky, in Eastern Kentucky Coal Lands Corporation v. Commonwealth, *supra,* speaking of this article, says, page 697:

"There can be no doubt that the Legislature determined to outlaw these dormant titles, and thereby protect the treasury and increase the State's revenue."

Again, on page 702, it says:

"The forfeiture is not a tax. Nor is it the equivalent. It is a penalty imposed for the violation of a statute. Like other penalties, it is the subject of legislative control and disposal, without regard to the previous title or ownership of the convicted violator of the law."

It is equally true that the requirements for the extinguishment of the cause for forfeiture are penalties. The first requirement for extinguishment contains the word "penalties" in it, and shows on its face that it is a penalty. The second requirement for extinguishment,

that the land be described so that it can be identified, does not appear on its face to be a penalty, but it is seen to be such when tested by the rule in Cummings v. Missouri, *supra*. The court there said, on page 321:

> "The deprivation of any rights, civil or political, previously enjoyed, may be punishment, the circumstances attending and the causes of the deprivation determining this fact."

Here the "circumstances attending and the causes" of this requirement show it to be a penalty. For the description of land, so that it can be identified, is required of those persons only who have failed to list their land for taxation, or having listed, have failed to pay the taxes thereon for the years 1901 to 1905 inclusive, or any three of such years. This is not required of any other class of persons. No reason can be given for requiring such a description for failures for these three particular years, except that it was intended to punish the owners of land for such failures. If the law had required in the future of all persons a description of the land, so that it could be identified, it would present a different question; but here the requirement was only as to those owners who had failed for any of the three years named, to list or pay their taxes. It is evident that this requirement was intended to make the extinguishment of the cause for forfeiture so onerous that the owner would be compelled to let the cause for forfeiture stand.

Take the case at bar—it is doubtful if the value of the land owned by plaintiff in error within the Reid patent

would equal in amount the enormous cost of the investigation and surveying required to have enabled plaintiff in error to describe the land after deducting the exclusions and thus be in a position to extinguish the cause for forfeiture. Therefore, there was no real opportunity given to plaintiff in error to extinguish such cause for forfeiture; and so far as it was concerned, and all land owners in like situation, the provisions for the extinguishment might just as well have been left out of Article III altogether.

It can not be successfully contended that the requirement to file a verified petition in the county court on or before January 1, 1907, "in which the land sought to be charged shall be described, so as to be identified," is a mere change of procedure. If the land owner were only required to furnish such description in that verified petition as was required of other owners listing land, then it would be a mere change of procedure. But the requirement, as we have seen, is more than that. It imposes upon him a burden of investigation and expense not imposed on others, and thus punishes him for his failure before the passage of the act.

Furthermore, this requirement to describe the land so that it can be identified is coupled with the other requirement to pay 30 per cent. interest and 15 per cent. penalty, and this latter requirement is expressly admitted by the Court of Appeals, in the case at bar, to be a penalty. If, then, the latter requirement to extinguish the cause of forfeiture was intended by the Legislature to be a penalty, is it not a fair conclusion that the same Legislature intended the requirement which it coupled with it to be a penalty

also? We submit that it is. We submit, therefore, that the "circumstances attending and the causes" for the enactment of this requirement as to the description of land, prove it to be a penalty.

The Court of Appeals, in the case at bar, and in its last utterance on this subject, expressly admits that Article III can not stand as a whole—that it is in part *ex post facto*, and void. The fault we have to find with this is that the Court of Appeals applied the constitutional prohibition to the wrong part of Article III—it applied it to the branch rather than to the root of the *ex post facto* law.

In its response to the petition for a rehearing it said, (R. 30):

> "But, it is insisted that as the act declares that delinquency for the years 1902, 1903, 1904, 1905 and 1906 (this is a typographical error as the years referred to by the act are 1901 to 1905 inclusive), shall be cause for forfeiture, which might have been removed on or before January 1, 1907, by the payment of the taxes and interest and penalties provided by law for the redemption of land sold for the non-payment of taxes, it visits upon the delinquent greater penalties than he was subject to prior to the passage of the Act.
>
> "This would be true if the delinquent had voluntarily paid the taxes for those years; but the result is not necessarily the same had the delinquent been proceeded against by an officer authorized by law to collect back taxes; *however we are of opinion that*

the delinquent's liabilities for those years are to be measured by his liabilities had he volunteered to list and pay his taxes. It, therefore, follows that the article, in so far as it requires the payment of interest and penalties for the years 1902, 1903, 1904, 1905 and 1906 (this is evidently a typographical error, as the years 1901 to 1905 inclusive are the years referred to by Article III), is inoperative, and the delinquent for those years would be required to pay only taxes, without interest or penalties. But, for the reasons and upon the authorities cited in the opinion and consistent with the rulings of this court, the elimination of the interest and penalties for the years 1902, 1903, 1904, 1905 and 1906, does not affect the other provisions of the article with respect to those years, or years subsequent thereto."

Now, here is an admission that so much of Article III as required the payment of "interest and penalties" for the years 1901 to 1905 inclusive is *ex post facto* and void. If that is true, then why is not so much of Article III as required the investigation and surveying of the adverse claims and exclusions in order to list the land for the years 1901 to 1905, also *ex post facto* and void? As we have seen, this latter requirement did not exist prior to the Act of 1906, and was not by that act made to apply to any future years. It was a penalty for the past omission to list, yet the Court of Appeals, in Eastern Kentucky Coal Lands Corporation v. Commonwealth, *supra,* holds it valid, while, in the case at bar, it holds the lesser penalty void. Therefore, under the decisions of the Court of

Appeals, the land owner upon the passage of the Act of 1906, could not escape punishment for his past failure to list, which failure was not so punishable at the time it occurred. Under those decisions he was punished by being compelled to investigate and survey out the adverse claims and exclusions, or, if he did not do that, he was punished by an absolute forfeiture of his land. We submit for this reason that Article III, in so far as it relates to the years 1901 to 1905, is *ex post facto* and void.

But the decision of the Court of Appeals in the case at bar is erroneous and illogical in applying the constitutional provision to the branch and not to the root of this *ex post facto* law.

It is erroneous and illogical in holding that the cause for forfeiture is valid, while at the same time, it holds that the provision allowing the owner to extinguish that cause of forfeiture by paying 30 per cent. interest and 15 per cent. penalty is void. It is perfectly plain that if the cause for forfeiture was a valid cause, as held by the Court of Appeals, then the Legislature had the constitutional power to impose upon the land owner a requirement that he pay 30 per cent. interest and 15 per cent. penalty in order to extinguish such valid cause for forfeiture.

The Legislature, in such case, would have had the constitutional right to deny to the land owner the right to extinguish that valid cause for forfeiture upon any terms. Therefore, it is plain that if the provision creating the cause for forfeiture is valid, as held by the Court of Appeals, the second provision, requiring the payment of the 30 per. cent. interest and 15 per cent. penalty to ex-

tinguish it, is also valid. On the other hand, if the provision creating the cause for forfeiture is unconstitutional, because *ex post facto*, and therefore void, then the provision requiring the payment of the 30 per cent. interest and 15 per cent. penalty to extinguish it, is also void; because, as there is no valid cause for forfeiture, there could be no valid requirement as to extinguishing it; there would be nothing to extinguish. It is perfectly clear from this test that both provisions must stand or fall together. They are both constitutional and valid, or they are both unconstitutional and void.

Moreover, the Legislature has, by Article III, undertaken to create a cause for forfeiture and to prescribe the terms upon which that cause might be extinguished. It can not be denied that it was the exclusive province of the Legislature to prescribe those terms, and that the Court of Appeals had no power to vary them—no more than it would have to vary the terms of any other statute, or of a written contract; for to vary those terms would be legislation, not decision. Yet, the opinion, in the case at bar, does vary those terms by holding that the land owner might have extinguished the cause for forfeiture by doing less than the Legislature prescribed that he should do in order to extinguish it. The opinion holds that he might have extinguished it by merely paying the taxes, while the Legislature said, in language positive and free from ambiguity, that he might extinguish it only upon paying the taxes, 30 per cent. interest and 15 per cent. penalty. We submit that the opinion, in so holding, is not construction nor decision, but legislation, and is erroneous for that reason.

In its original opinion in the case at bar, the Court of Appeals (R. 17), relies upon the cases of Hoke v. Commonwealth, 79 Ky. 567, and Muir's Admr. v. City of Bardstown, 120 Ky., 739, as authority for holding valid the forfeiture provision, and holding void the provision requiring the payment of the 30 per cent. interest and 15 per cent. penalty. In each of these cases, however, there was no provision for a forfeiture, but simply a provision imposing a penalty for a past failure to list for taxation. The provision imposing the penalty was the only *ex post facto* feature of the statutes under consideration in those cases, and as it was not dependent on any other provision, was properly held void, because it was, in itself, inherently invalid. These cases are no authority, therefore, for the erroneous decision in the case at bar.

Again, the decision in the case at bar was not rendered until after the time for extinguishing the cause for forfeiture had expired and the cause for forfeiture had therefore become complete. The decision, therefore, operated as a trap to catch those land-owners, who, like the plaintiff in error, stood on their constitutional rights, believing that the Constitution of the United States guaranteed them protection from the iniquities of Article III.

It is submitted that this Court is not bound in any way by the decision in the case at bar, for it is not a construction, nor an interpretation of the statue in question, but it is a declaration that the Constitution wipes out certain of the terms imposed by the Legislature for the extinguishment of the cause for forfeiture, while it leaves stand the cause for forfeiture itself.

However, as heretofore shown, the striking out of the 30 per cent. interest and 15 per cent. penalty still leaves

the other penalty of the investigation and surveying which has not been stricken out by the decision of the Court of Appeals in this case, and renders so much of Article III as relates to the years 1901 to 1905, void.

But even had that also been wiped out, even had Article III not imposed any penalty incident to the extinguishment of the cause for forfeiture, yet we maintain that the provision which created a cause for forfeiture for a past omission is in itself *ex post facto and void.*

To make this clear, let us suppose a case. Suppose that the Legislature had, in 1906, passed a statute, providing that it shall be the duty of every thief who has stolen any property during any of the years 1901 to 1905, inclusive, to return same, or its value, to the owner thereof, or to the county court for the owner; providing, second, that if any such thief has failed to so return such stolen property, or its value, such past failure to return same to the owner shall be cause for confining said thief in the penitentiary for life; and providing, third, that such thief may extinguish the cause for confining him in the penitentiary for life by returning such stolen property, or its value, to the owner or to the county court, for the owner, prior to the first of March, 1907. Would this supposed law be *ex post facto?* It is exactly analogous to the forfeiture law with the penalties for extinguishing it stricken out, excepting that the thief is taken as its victim instead of a delinquent land-owner. It was the duty of the thief before the supposed law was passed to return the stolen property, or its value, to the owner, and so it was the duty of the land owner, before the law of 1906 was passed, to list his land and pay the taxes thereon. It is still made the duty of the thief, under the supposed law, to return

the stolen property to the owner, just as it is made the duty of the land owner, under the Act of 1906, to list his property and pay the taxes thereon. Now, suppose such thief does not return the stolen property or its value, to the owner, or to the county court for the owner within the limited time, could he be confined in the penitentiary for that failure? The question answers itself. It would be ridiculous to argue that such thief could be confined in the penitentiary for life under such a law. Such thief might not have the stolen property, or the value thereof, and might be thus unable to comply with the law. And so, the land owner may not be financially able to pay the taxes due on his land prior to the first of March, 1907. Yet, Article III of the Act of 1906 provides for his complete financial ruin by forfeiting his land absolutely, and by taking away from him the right of redemption given to all other land owners, whose lands are sold for taxes.

This court said, in *Kring* v. *Missouri*, 107 U. S. 221:

> "We are of the opinion that any law passed after the commission of the offense, which, in the language of Mr. Justice Washington in United States v. Hall, 'in relation to that offense, or its consequence, alters the situation of a party to his disadvantage,' is an *ex post facto* law."

We submit that Article III comes within this decision even though the penalties for extinguishing the cause for forfeiture may be stricken out; that it does alter the situation of the land owner to his disadvantage, and is an *ex post facto* law.

Before leaving this subject, we wish to mention that no *ex post facto* question was presented in King v. Mullins, 171 U. S. 404. The West Virginia Statute had been enacted in 1872, and the land was forfeited in King v. Mullins for a failure to list it for the years 1883 to 1894, inclusive. The forfeiture there was for future years, and of course, could not raise any *ex post facto* question. Still another reason why the question could not have arisen under the West Virginia Statute of 1872, is, that under the West Virginia Constitution and Statutes of 1862, an owner guilty of omission to list his land had been subject to the identical penalties which the 1872 Act retroactively imposed; the 1872 Statute, therefore, did not give "to the circumstances which constituted and attended the act (of failure to list in 1870) a legal significance more injurious to the accused than was attached to it by the law existing at the time of the transaction." It is evident that the framers of Article III, in copying the retroactive features of the West Virginia law, did not realize the difference in Kentucky legislative history from that of West Virginia which would make its adoption impossible.

ARTICLE III VIOLATES THE CONSTITUTION, IN THAT IT DENIES TO PERSONS WITHIN THE JURISDICTION OF THE STATE THE EQUAL PROTECTION OF THE LAWS.

Article III denies to persons, of whom plaintiff in error is one, the equal protection of the laws. This is at once manifest from a consideration of the class of persons upon whom Article III is designed to operate. It operates only upon an owner who shall have failed to list or to pay taxes on his land as of any three of the following dates: September 15, 1901, September 15, 1902, September 15, 1903, September 1, 1904, September 1, 1905. Any owner who may have failed to list and pay taxes on his land as of any number of years prior to 1901, and furthermore as of any *two* dates between 1900 and 1906 is exempt from the operation of Article III; he might go to the county clerk at any time and list his lands for assessment and pay the taxes thereon without describing it so as to be identified and without paying any interest or penalty; and the same is true of the owner who may have failed to list and pay taxes for any *two* years during the period from 1901 to 1905, inclusive, and for any four additional years since that period. By the terms of Article III an owner delinquent in any three years from 1901 to 1905 could not pay his taxes, even though he had theretofore listed his land, except upon filing his verified petition in the county court describing the land owned by him so that it could be identified—that is, describing the balance of the land after

deducting the exclusions owned by others, so that such balance could be identified—and by paying, in addition to his taxes, 30 per cent. interest and 15 per cent. penalty. And the same inequality with the same fantastic line of cleavage exists respecting the penalty of forfeiture. Only that narrow class of persons is deemed "delinquent," although the tax law violations of members of this class may be, in fact, far less than those of other persons on whom the State fastens no penalty or additional obligation whatsoever. Unless a reasonable basis for such classification can be discovered, there is no conceivable escape from the repudiation of it by this Court as a denial of the equal protection of the laws. We quote the following trenchant condemnation of Article III from the dissenting opinion of Judge Hobson (R. 22):

> "By the general law the person owning land at the time it should be assessed is not only liable for the taxes but remains bound therefor; by this article the present owner's land is forfeited to the Commonwealth for the non-payment of taxes by the former owner. By the general law if the occupant of land pays the taxes thereon, he is entitled to recover of the owner the amount so paid with interest, and has a lien on the land therefor; by this article, the fact that the land has been listed for taxation and the taxes paid by the occupant does not prevent the forfeiture as therein set out. By the general law land may be assessed retrospectively at any time not later than five years but not to prejudice the rights of purchasers acquired in the meantime; by this ar-

ticle the purchaser is required to pay the taxes with interest and penalty. By the general law if the owner sells the land after the first of February of the year in which the taxes are due and payable, it is the duty of the owner to pay the taxes; by this article the purchaser's title is forfeited if he does not pay them. By the general law where property has been sold for taxes, the owner may redeem it within two years; by this article the owner forfeits his title to the land if he fails to assess it and pay the taxes thereon as therein provided. By the general law, if the owner fails to assess his property, it may be assessed retrospectively, but the taxes are then collected as other taxes; by this article the taxes are not collected as other taxes, but must be paid at once with interest and penalties, to avoid a forfeiture of the title. By Section 4 of this article, before the defendant may redeem, he must pay not only the amount of unpaid taxes charged, but those that ought to have been charged against those under whom he claims for fifty years preceding the filing of the counterclaim. (Judge Hobson might have added, "with interest thereon at the rate of 15% per annum.") No such provision is found in the general law relating to other property, and there is no provision in the general law for double taxation of the same property, and the payment of the taxes by each claimant where there are two claimants to it.

"A reading of the article shows that it was a deliberate attempt on the part of the Legislature to deny the equal protection of the laws to the

owners of the land titles referred to, and to provide as to the holders of these land titles an entirely different system from that provided for the holders of other species of property. It is therefore in my judgment void both under the Constitution of this State and the Constitution of the United States."

There is an additional reason to those given by Judge Hobson why Article III denies to the plaintiff in error the equal protection of the laws. We have heretofore seen that, as construed by the Court of Appeals, Article III demands from the class of owners, to which the plaintiff in error belongs, a description of its lands vastly more difficult and expensive to furnish than it demands from other persons—so difficult, in fact, as to be almost impossible to furnish within the period allowed by the statute. We have, in a former part of this brief, compared the description of land required by Article III of a delinquent owner for the years 1901 to 1905, inclusive, or any three of them, as a condition to his being allowed to list his land by petition in the county court, with the description which the very same act required of any other owner remiss in any two of such years, and in any number of previous years, and have shown that the only description required of the latter is a statement of the number of acres, the nearest resident and the election precinct.

As the general Revenue and Taxation Law of 1906, of which Article III is a part, was approved on March 15, 1906, the owners or claimants affected by it had left to them a little more than nine months in which to do

the work necessary for preparing the descriptions of their land which Article III required to be made part of any petition to list. It is at least doubtful whether the necessary investigation and surveying could have been completed within that time. The requirements as defined by the Court of Appeals necessitated an investigation of great thoroughness and a survey entailing great expense.

Is there a legitimate reason in the established practice of taxation, in economics, in public policy or, in logic, for such a discrimination as Article III makes? This court has held that discrimination in tax legislation may be made as between property of different kinds (*Wurtz* v. *Hogeland*, 114 U. S. 606), between like property used by corporations and by individuals (*American Sugar Refin'g Co.* v. *Louisiana*, 179 U. S. 89). With respect to penalties attaching to tax law violations, this Court has held that discrimination may be made between different classes of owners according to the business in which they may be employing their property (*Western Union Telegraph Co.* v. *Indiana*, 165 U. S. 304). In *King* v. *Mullins*, 171 U. S. 404, where the West Virginia forfeiture law exempted tracts of under 1,000 acres from forfeiture, this court sustained that classification on this ground: that the intention of the Legislature had been to remedy the persistent failure of owners of "large tracts of land * * * to list them, so that the extent and boundaries of such tracts could be easily ascertained by the officers charged with the duty of assessing and collecting taxes. Where the tract was a small one, the probability was that it was actually occupied by some one, and its extent or boundary could be readily ascertained for purposes of assessment and taxation."

Section 171 of the Kentucky Constitution provides that taxation "shall be uniform upon all property subject to taxation * * * and all taxes shall be levied and collected by general laws." This is but an expression of that fundamental conception in taxation, uniformity and equality. Upon that fundamental conception this Court has ever insisted. Any discrimination, based upon different conditions under which property may be held, which may be made between classes of owners or of property, in the mode of enforcement of State taxes, or in penalties attaching to their evasion, must be a discrimination directed toward effecting and maintaining such uniformity and equality in fact; and such classification must be reasonably calculated to secure uniformity, or this court will repudiate it. It may not distinguish between owners where conditions are such as to place them in the same natural class. It may not within the sphere of its operation affect differently individuals of the same class. The glaring discrimination presented by Article III between the requirements of description from an owner, upon the one hand, whose land was unlisted in 1901, 1902 and 1903 and, on the other hand, an owner whose land was unlisted in each year from 1890 to 1902, or in each year from 1904 to 1908, or in each year from 1906 to 1910, has no basis in reason. It was said by Mr. Justice Matthews in the *Kentucky Railroad Tax Cases*, 115 U. S. 321:

> "The rule of equality, in respect to the subject, only requires the same means and methods to be applied impartially to all the constituents of each

class, so that the law shall operate equally and uniformly upon all persons in similar circumstances."

In *Gulf, Colorado & Sante Fe R'y* v. *Ellis*, 165 U. S. 150, this court clearly indicated the limits of legitimate classification, Mr. Justice Brewer saying in part:

"Yet it is equally true that such classification can not be made arbitrarily. The State * * * may not say that all men beyond a certain age shall be alone thus subjected, or all men possessed of certain wealth. These are distinctions which do not furnish any proper basis for the attempted classification. That must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis. * * * But arbitrary selection can never be justified by calling it classification. The equal protection demanded by the Fourteenth Amendment forbids this. * * * No duty rests more imperatively upon the courts than the enforcement of those constitutional provisions intended to secure that equality of rights which is the foundation of free government. * * * It is apparent that the mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of the Fourteenth Amendment, and that in all cases it must appear not only that a classification has been made, but also that it is one based upon some reasonable ground—some difference which bears a just and

proper relation to the attempted classification—and is not a mere arbitrary selection."

The classification made by Article III is not based upon any difference in location of lands. It is not based upon any difference in the relative sizes of the tracts of land affected; nor upon the uses to which the lands are put. Nor can it be based upon any difference in the degree of culpability of the different classes of owners, which could suggest the imposition of different degrees of hardship in requiring description of their lands for retrospective assessment. Here are lands of like character, location, use, and like personnel of ownership; and their owners have been equally remiss with respect to their tax obligations to the State. If it be true, as the Court of Appeals has stated in its opinion in *Eastern Kentucky Coal Lands Corporation* v. *Commonwealth,* 127 Ky. at page 719, that Article III demands this new method of description for the reason that a description of a tract of land without the specific description by metes and bounds of all exclusions within its area is too uncertain to admit of the lands being identified by the assessing authorities, why should this new method of description be required, on the one hand, from the owner of land omitted in 1901, 1902 and 1903, but, on the other hand, not from the owner of land omitted from 1890 through 1902, nor from the owner of land omitted from 1904 to 1908, nor from the owner of land omitted from 1906 to 1910? There can be absolutely no reason, unless it could be said that omission of land for the third time in the particular period from 1901 to 1905

had, by some magic charm, made it more difficult of identification than it was when it had been omitted only twice in that period! To some such fantastic explanation must we be driven if we are to account for a classification so irrational and arbitrary as this one. In *Bell's Gap R. R. Co. v. Pennsylvania,* 134 U. S. 232 (237), this Court said:

> "The provision in the Fourteenth Amendment, that no State shall deny to any person within its jurisdiction the equal protection of the laws, was not intended to prevent a State from adjusting its system of taxation in all proper and reasonable ways. * * * But clear and h o s t i l e discriminations against particular persons and classes, especially such as are of an unusual character, unknown to the practice of our governments, might be obnoxious to the constitutional prohibition. It would, however, be impracticable and unwise to attempt to lay down any general rule or definition on the subject, that would include all cases. They must be decided as they arise."

Here has arisen such a case; for Article III in its requirement of an onerous and unusual description from, and in its imposition of penalties upon, that class of persons alone who may have omitted to list their land for assessment in any three years from 1901 to 1905, or may thereafter so omit in five successive years, is indeed a clear and hostile discrimination against particular persons and classes, of an unusual character, un-

known to the practice of our government and irrational, not to be supported upon any legitimate reason of expediency or justice; and we believe that this court will condemn that discrimination as a denial to the plaintiff in error of the equal protection of the laws.

ARTICLE III VIOLATES THE DUE PROCESS OF LAW REQUIREMENT OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

The plaintiff in error contends that Article III, through the judgment of the said court below, takes its property without due process of law. This contention is based upon the following grounds: First, that, whereas previous to the enactment of Article III title could be divested only by fifteen years' adverse possession, Article III operates to vest title to the plaintiff's in error land in occupying claimants who have had only five years of adverse possession; and that the six months intervening between the going into effect of Article III and the ripening of title of such occupying claimant, in the event of a judgment of forfeiture, did not afford to the plaintiff in error a reasonable opportunity to terminate the adverse possession of such claimant. Second, that the penalty of forfeiture, necessarily importing a practical destruction of the entire value of the property right of plaintiff in error, is arbitrary, excessive and not reasonably necessary for the collection of the unpaid taxes, which was the ostensible object of the Legislature in its enactment of Article III.

I.

ARTICLE III CUTS OFF THE OWNER'S RIGHT OF ACTION IN EJECTMENT AGAINST OCCUPYING CLAIMANTS.

Taking up our first contention under the due process prohibition of the Constitution, we shall show the Court that Article III withdraws the ten-year period for the termination of the adverse possession of squatters of five years' standing in these mountain lands and substitutes for it an unreasonably short period within which the plaintiff might terminate such adverse possession. Section 6 of Article III provides:

> "All title and claim proceeded against under this article and forfeited to, and vested in, the Commonwealth and not purchased back by the owner or claimant thereof, as authorized in Section 4 hereof, whether such forfeiture be for past delinquencies or for future delinquencies as authorized under Section 10 hereof, shall be, and is hereby, transferred to, and vested in, any person for so much thereof as such person, or those under whom he claims, has had the *actual adverse possession for five years next preceding the judgment of forfeiture*, under claim, or color of title, derived from any source whatsoever, and who, or those under whom he claims, shall have paid taxes thereupon for the five years in which such possession may have been or may be held; and in those in privity with such person, his

heirs, representatives or assigns, as to the mineral or other interests or rights in or appurtenant to such land."

Section 2505, Kentucky Statutes, 1903, provides:

"An action for the recovery of real property can only be brought within fifteen years after the right to institute it first accrued to the plaintiff, or to the person through whom he claims."

Before the enactment of Article III the delinquent owner still had a period of ten years in which he could, by ejectment proceedings, duly carried through to judgment and execution, have ended the adverse possession of any occupying claimant whose claim was of five years' standing; he had five years in which he might proceed similarly against an adverse claimant of ten years' standing.

The regular session of the General Assembly which was begun on January 2, 1906, was adjourned on the 13th of March, 1906. Section 55 of the Constitution of Kentucky provides:

"No act, except general appropriation bills, shall become a law until ninety days after the adjournment of the session at which it was passed, except in cases of emergency, when, by the concurrence of a majority of the members elected to each House of the General Assembly, by a yea and nay vote, entered upon their journals, an act may become a

law when approved by the Governor; but the reasons for the emergency that justifies this action must be set out at length in the journal of each House."

There is no emergency clause contained in the Revenue and Taxation Law of 1906, and the enactment therefore did not become a law until June 11, 1906. Section 6 of Article III put upon the delinquent owner the necessity of positively ending "*the actual adverse possession*" of any claimant within six and a half months, if he would prevent vesting of title in him. The "*actual adverse possession*" of such person could be terminated only through the *execution* of a writ of possession issued by the court after judgment in an action of ejectment. In case it should be suggested here that actual adverse possession would be ended by the filing of a petition in ejectment, or at least by the entering of a judgment for the plaintiff, we shall at once refer the court to *Batterton* v. *Chiles, 51 Ky.* (12 B. Monroe) 348, at page 352. There the successful plaintiff in an action in ejectment had failed for a considerable period of time to have a writ of possession issued in execution of the judgment. Subsequently, in partition proceedings in equity, the Kentucky Court of Appeals held that "the recovery of the judgment in ejectment did not of itself change the character of the possession held by the defendant in that action; nor does it preclude them from relying upon the Statute of Limitations in this suit."

We call the attention of the court to these facts: 1. A considerable part of the land of the appellant was

adversely held by occupants at the time of the enactment of Article III. The Court of Appeals states on page 17 of the record that it judicially knows this to be true. 2. The land which is the subject of the judgment of forfeiture in the instant case lies in Leslie County. 3. Leslie County being in the 33d Judicial District of Kentucky (*Kentucky Statutes, 1909, Section 963*), has three circuit court terms a year (*Act of February 21, 1906; Kentucky Statutes, 1909, Section 965*) at the following times: First Monday in February, to continue twenty-four judicial days; first Monday in May, to continue eighteen judicial days; first Monday in October, to continue twenty-four judicial days. 4. The following are some of the provisions of the Kentucky Code of Practice: *Section 367-a, Sub-section 1:*

> "The first Monday in each month shall be rule day in the office of the clerk of each circuit court."

Sub-section 3:

> "At the first rule day after the summons has been served ten days in the county, the defendant so served shall file his answer or other plea he may have, whether of law or of fact. On the next rule day, the opposite party shall file his reply or other plea he may have, whether of law or of fact; and so on at all succeeding rule days until the issue shall be fully made up. If any party shall fail to file any plea at the rule day at which the same is due, he may file the same at a subsequent rule day, and as soon as practicable, and shall file therewith his affidavit or other sworn statement as to the cause of his delay,

and if the court shall consider his excuse insufficient, it may at the next regular term, strike such plea from the files. If any demurrer, motion to elect, or like pleading is filed, the Court shall dispose of same as soon as possible and before the case is called for trial or submitted, and the court shall in such cases direct when subsequent pleadings should be filed."

From Sub-section 11:

"The court may, in its discretion, allow a pleading to be filed after it is due under the provisions of this act."

Section 107:

"The court may for good cause shown, and at the cost of the party applying therefore, extend the time for filing a pleading but not beyond the next succeeding term."

Section 975, Kentucky Statutes, 1903, provides:

"If a court shall not, before the end of the term, have disposed of the business in court such business as is not disposed of shall stand continued until the succeeding term."

Kentucky Statutes, 1903, Section 1563, provides:

"No execution shall issue on any judgment unless ordered by the court, until after the expiration of ten days from the rendition thereof."

Code, Section 342:

"The application for a new trial shall be within three days after the verdict."

Code, Section 745:

"An appeal shall not be granted, except within two years after the right to appeal first accrued."

Taking into consideration the above facts together with this one; that in Kentucky adverse possession is ended only by execution of a judgment in ejectment proceedings,—it is certain that under the most favorable circumstances, in any contested case, an owner of land in Leslie County could not have succeeded in ending the adverse possession of an occupant within six and a half months after June 12, 1906. Section 6, then. practically cut off entirely the statutory period of about nine years within which the appellant might have instituted an action in ejectment against occupants of five years' standing. Can there be any doubt that the Legislature, with all its grim hostility of purpose evinced throughout Article III realized the harshness of this phase of the operation of Section 6? Certain it is that this Court will condemn it.

> "It is the settled doctrine of this court that the Legislature may * * * shorten the time within which suits to enforce existing causes of action may be commenced, provided, in each case a reasonable time, taking all circumstances into consideration, be given by the new law for the commencement of suit before the bar takes effect." (Mr. Justice Harlan in *Wheeler* v. *Jackson*, 137 U. S. at page 255.)

But if a reasonable time be not given by the new law, it is unconstitutional. *Sturgis* v. *Crowninshield*, 4 Wheaton, 122 (at page 207); *Piatt* v. *Vattier*, 1 McLean, 146 (at page 158); *Koshkonung* v. *Burton*, 104 U. S. 668 (at page 675); *Berry* v. *Ransdall*, 61 Ky. (4 Met.) 292;

Price v. *Hopkin*, 13 Mich. 318; *Osborne* v. *James*, 17 Wis. 573; *Rodenbaugh* v. *Philadelphia Traction Company*, 190 Pa. State, 358.

As stated by Judge Cooley in *Price* v. *Hopkin*, 13 Mich. 318:

> "It is of the essence of the law of limitation that it shall afford a reasonable time within which suit may be brought; * * * a statute that fails to do this can not possibly be sustained as a law of limitation, but would be a palpable violation of the constitutional provision that no person shall be deprived of property without due process of law."

Although Section 6 is not in the form of a Statute of Limitation, it is such in effect, and is subject to the test as laid down by Judge Cooley. This court measured by that test a law very similar in form to Section 6 in *Soper* v. *Lawrence Bros.*, 201 U. S. 359. There a Maine Statute of 1895 provided that the State Treasurer's deed of wild land, forfeited for unpaid taxes to a person who for twenty years shall have been an adverse occupant in exclusive possession, shall be good as against any former owner who, up to January 1, 1900, shall not have paid any taxes "or done any other act indicative of ownership." In other words, the statute gave the former owner *five years* in which to do some act which would destroy the occupant's inchoate right. This court examined the statute as a new statute of limitation and held that in giving five years, it gave the former owner reasonable time in which to prevent his title from being divested. Apply-

ing the test of reasonable time to the situation at bar, we believe that this court will find that Section 6 of Article III is unconstitutional for the reason that it cuts off the owner's right of action against adverse occupants and prevents him from terminating their adverse possession before the forfeiture can take effect.

II.

THE FORFEITURE IMPOSED BY ARTICLE III VIOLATES THE DUE PROCESS REQUIREMENT OF THE CONSTITUTION IN BEING ARBITRARY AND EXCESSIVE.

We contend, secondly, that the forfeiture imposed by Article III operates with such excessive hardship upon the owner as to be a taking without due process of law. This contention is not based upon any insufficiency of notice or hearing given to the owner, but upon the manner in which his property rights are disposed of under the judgment. Assuming the validity of Section 6, by force of which so much land as shall have been occupied for five years by an occupying claimant, who, during such time, shall have been paying taxes thereon, shall vest in such claimant, we have this result: That, when judgment of forfeiture has been entered, the State then holds for sale only such land of the delinquent as is not vested in occupying claimants under Section 6, and is not in adverse possession at the time of the sale. In the case at bar, the Kentucky Court of Appeals said, on page

17 of the record: "The court judicially knows, and it was admitted in argument, that practically, if not quite, all the land described in the petition is adversely held by occupants under claim or color of title." This court will readily see, therefore, the basis for the criticism of the plaintiff-in-error of Article III, in that it operates with excessive hardship upon the delinquent owner. In the first place, it may at once transfer his interest in his entire boundary to adverse occupants, leaving to the delinquent not one penny's worth of residual value. The excessive hardship of this result is unprecedented since the existence of the Fourteenth Amendment, and will, we feel sure, be a ground for this court's repudiation of Article III. The delinquent owner, to this extent, loses his land outright and utterly. In the second place, if parts of the owner's boundary have not been by the judgment of forfeiture *ipso facto* vested in occupants, and if there remain, in the hands of the State, land of the delinquent owner, Article III, as construed by the Court of Appeals, so operates upon it as to destroy entirely its value to the delinquent. We have seen from an earlier analysis of the statute and of the Kentucky court's construction of it (pages 18 to 31, *supra*), that the provisions of Article III, relating to the judgment ordering the sale and to the subsequent proceedings incidental to the sale, do not afford to bidders any description of the area which is to pass under the sale. The court expressly held (see page 18 of the record), that the description of lands vesting in occupants shall not be ascertained previously to the sale. The statute informs the bidder that there is to be sold the delinquent's interest in only so much of the land as may

not have vested in occupants, and this is the extent of his information. His bid will be made with the knowledge, under the extremely liberal law in Kentucky, discussed on page 24, *supra*, that the delinquent's interest in perhaps but a small part, or even to no part at all, of the land, may pass by the sale.

We say that for the State to sell the debtor's land in this manner, is equivalent to confiscation, and takes it without due process of law. To dispose of the delinquent owner's land in this manner, is not a sale of his interest; it is necessarily a slaughter. The failure of the State to provide for a description to bidders at the sale means practically that the delinquent owner forfeits not only that land which vests in the occupant, but also the remaining land, since he must necessarily also lose the value of that at the hands of the court and commissioner. Such a treatment as this of the delinquent's interest is a taking without due process of law. It ignores entirely the right of the delinquent owner to the value of his residual interest in the property, and destroys that value. It omits a safeguard of his individual rights which settled rules of law and judicial usage have prescribed; and there was no reasonable necessity for such treatment in order to accomplish the result aimed at by the Legislature, namely, the collection of back taxes due on mountain lands. The West Virginia law examined by this court in *King* v. *Mullins*, 171 U. S. 404, in its safeguarding of the residual rights of the delinquent, contrasts strikingly with the harsh cruelty of Article III. The provisions will be found in Chapter 105 of the West Virginia Code of 1891 at Sections 8 to 15. There the commissioner is required to

make a report which includes a statement of "what portion, if any, of such real estate (forfeited) is claimed by any person under the provisions of Section 3 of Article 13 of the Constitution of this State (which vests forfeited land in occupants), the facts in relation to every such claim and the boundaries thereof. * * * If it be necessary to enable the commissioner to perform his duties under said decree, he shall employ the surveyor of the county or another surveyor to do such surveying as he may require to be done." This report of the commissioner is filed in the clerk's office, where it lies over for sixty days, subject to exceptions.

This court has declared, in what is probably the most significant line of utterances delivered in its history, that the requirements of due process go further than notice and hearing; that they prohibit the imposition by the State of hardship upon the individual greater in degree than is necessary for the accomplishment of the ends sought by the Legislature, and that even in the exercise of its police power (which from the beginning has been regarded as a sanction for omitting usages of due process), a State is subject to this restriction: That unusual hardship imposed upon the individual can be justified only by being fairly and reasonably necessary for the attainment of the object sought by the Legislature.

It is not necessary for us in this connection to cite authority at great length. The definition of due process given by Justice Story (*Story on the Constitution, 4th Ed., Section 1943*) corresponds prophetically with the definition at which this Court arrived in the half century subsequent to its enunciation. It is as follows:

"Due process of law in each particular case means such an exertion of the powers of government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one being dealt with belongs."

Judge Cooley says in his work on "*The General Principles of Constitutional Law,*" *3d Edition, 1908, p. 241,* with regard to the phrase, "due process of law":

"It has long been in use among all writers and in judicial decisions as implying correct and orderly proceedings which are due because they observe all the securities for private right which are applicable to the particular case."

Mr. Justice Field, in *Hagar* v. *Reclamation District,* 111 U. S. 701 (708), said:

"The clause in question means, therefore, that there can be no proceeding against life, liberty or property which may result in the deprivation of either, without the observance of those general rules established in our system of jurisprudence for the security of private rights."

This court is too familiar with its own line of cases, above referred to, to justify our quoting from them here at length. Two recent cases, however, may well be cited here because, in each of them, the statute which was being

scrutinized by this court did not present any question with reference to notice or hearing, because furthermore it was not in its essential nature a police power measure, and, lastly, because this court held the law to be unconstitutional for the reason that the unusual hardship imposed by it was *"not fairly or reasonably necessary to attain"* the object of the Legislature, and therefore violated the requirements of due process. The first of the two cases is that of *Lake Shore & Michigan Southern Railway Co.* v. *Smith,* 173 U. S. 698. The State statute being examined required that railroads should sell 1,000 mile tickets at certain prices. This court, in holding the law unconstitutional, said in part (pages 697 and 698):

> "To say that the Legislature has power to absolutely repeal the charter of the company and thus to terminate its legal existence does not answer the objection that this particular exercise of legislative power is neither necessary nor appropriate to carry into execution any valid power of the State over the conduct of the business of its creature. To terminate the charter and thus end the legal life of the company does not take away its property, but, on the contrary, leaves it all to the shareholders of the company after the payment of its debts. * * * The power to alter or amend does not extend to the taking of the property of the corporation either by confiscation or indirectly by other means * * *.
>
> "In holding this legislation a violation of that part of the Constitution of the United States which forbids the taking of property without due process

of law, and requires the equal protection of the laws, we are not, as we have stated, thereby interfering with the power of the Legislature over railroads as corporations or common carriers to so legislate as to fix minimum rates, to prevent extortion or undue charges, and to promote the safety, health, convenience or proper protection of the public. We say this particular piece of legislation does not partake of the character of legislation *fairly or reasonably necessary to attain any of those objects,* and that it does violate the Federal Constitution, as above stated."

Another case more recent is that of *L. & N. R. R. Co.* v. *Central Stock Yards Company,* 212 U. S. 132. The State law required a railroad company upon payment simply for service of carriage, to accept cars offered it at an arbitrary connecting point by a competing road for the purpose of using such company's terminal facilities. This court, in holding the statute to be violative of due process, said in part (page 145):

"The duty of a carrier to accept goods tendered at its station, does not extend to the acceptance of cars offered to it at an arbitrary point near its terminus by a competing road for the purpose of reaching and using its terminal station. To require such an acceptance from a railroad is to take its property in a very effective sense, and can not be justified, unless the railroad holds that property subject to greater liabilities than those incident to its calling alone.

Article III of the Kentucky Law of 1906, relating to revenue and taxation, does not present any police power motive for justification of the extreme hardship which it imposes upon the delinquent owner in forfeiting part of his property outright, and in slaughtering the value of his remaining property at a proceeding which is a mockery of a public sale. If it could be said that Article III is an exercise of the police power, we should have to inquire whether its hardships are fairly or reasonably necessary. If it is not an exercise of police power, but is merely an exercise of the taxing power, which has never been invoked as a sanction for unusual interference with the individual's enjoyment of his property, then this court will test Article III in the light of due process, without giving to it the benefit of justification on account of the reasonable necessity of its unusual severity to the individual for the attainment of the object of the statute; and the visitation, therefore, by Article III of punishment unusual, and ignoring, as Judge Cooley puts it, "the securities for private right, which are applicable in the particular case" will necessarily lead to a repudiation of the statute by this court. We have now to inquire therefore, whether a commissioner's sale of the kind provided by Article III is arbitrary or ignores the securities for private right which are applicable in this particular case.

That statutory provisions relative to a judicial sale may be held to be a violation of due process for arbitrariness, was impliedly held by this court in 1833 in the case of *Lessees of Livingstone* v. *Moore*, 7 Peters, 469, 493, 551.

This brings us to examine the history in English and American jurisprudence of the State's operation upon tax delinquents. English law, from the earliest times, invested property in land with a certain sacredness. It could change ownership only by voluntary act of its owner, excepting in case of heinous offense, such as treason; it was immune from all seizure for debt at the hands of the State which would entail a loss of title, even while the person of its owner might be seized and subjected to imprisonment. Under the process of Elegit created in the year 1284 by the *Statute of Westminister Second*, 13th Ed. 1, Sta. 2, chap. 18, there could be no divesting of title from the owner and only a moiety thereof could be held "by extent" until the rents thereof should satisfy the debt. This was the utmost right that a judgment creditor could obtain through the State in the land of his debtor; and at Common Law this right was not extended until 1883 in *46 and 47 Victoria, chapter 52*. After noting the State's inability to sell the land of private debtors, it is not surprising to find that the State was equally powerless wih respect to the collection of taxes. Whether, under the writ of *levari facias* issuing out of Common Law or under the writ of *extendi facias* issuing from the Court of Exchequer, the lands of the King's debtor could be held only for securing the rents thereof to the King until the debts were satisfied. It was not until 1784, in *25 George III, chapter 35, Section 1*, that the power was given to the State to sell lands to realize upon debts due to the King seized under writ of *extendi facias* (*Tyrwhitt & Tyndale Digest of Eng. Statute Law*, 1822, *Tidds Practice*, Vol. 2, page 1069). And it was not until 1820

(*1 George IV, chapter 73, Section 9*) that taxes were first placed in England upon the footing of a debt due to His Majesty on record, so that it might be collected and enforced by process of execution and sale of land.

The systems adopted from the first by the various States of the Union after 1787, for the subjection of lands for taxes, well support Judge Cooley's statement in his work on the *Law of Taxation, 3d Ed., Vol. 2, page 1023*, where he says:

> "It is not the policy of the law that any man should forfeit his estate because from inability or even from negligence, he has failed to meet his engagements or to perform his duties by some exact day which has been prescribed by statute. On the contrary, it is for the welfare of every community that the law should favor the citizen in all reasonable measures for the preservation of his estate against losses which might result from his misfortunes or his faults, extending to him all the liberality that is consistent with justice to others, and a proper regard for the interest of the public. The principle is recognized in the liberality shown to those desirous to redeem from the technical forfeiture of mortgage estates as well as in the provisions made for redemption from judicial sale. It is also very properly recognized in the law providing for redemption from tax-sales."

A survey of the statutes of every State discloses the fact that in none of them, under existing laws, can an

owner lose title to his property for a failure to list his land for assessment, in such a way as not to be able to redeem it entirely by the payment of his debt to the State. Virginia, West Virginia and Maine are the only States so far as we know, which have a system of so-called "forfeiture" for non-listing, and they allow to the delinquent a liberal period for exercise of the full right of redemption of the land by payment, in Maine of tax, interest, costs and penalty, and in Virginia and West Virginia of tax, interest and costs, without penalty. In passing upon the constitutionality of the West Virginia law in *King* v. *Mullins*, 171 U. S. 404, this court will remember that it there intimated that it would have been forced to hold the bare constitutional provision for forfeiture unconstitutional if the case had presented it alone for scrutiny, but held finally under an analysis of the "system" of forfeiture which included the Constitution, *together with the statutes*, that the provisions of that "system" for redemption and for safe-guarding, in case of sale, for the delinquent, the residual value of his property after taking out of it the debt due to the State, were so fair and beneficent that the owner could not complain of having been deprived of his property. The following passages from the opinion will recall to the court these considerations which governed its decision in that case:

> "Under these circumstances, our duty is not to go beyond what is necessary to the decision of the particular case before us. If the rights of the parties in this case can be fully determined without passing

upon the general question whether the clause of the West Virginia Constitution in question, *alone considered*, is consistent with the national Constitution, that question may properly be left for examination until it arises in some case in which it must be decided. We come then to inquire whether, looking at the Constitution and the Statutes of West Virginia together, a remedy was not provided which if pursued, furnished to the plaintiff and those under whom he asserts title all the opportunity that 'due process of law' required in order to vindicate any rights that he or they had in respect to the lands in question * * * It thus appears that under the statutes of West Virginia in force after 1882 the owner of the forfeited lands had the right to become a party to a judicial proceeding, of which he was entitled to notice, *and in which the court had authority to relieve him, upon terms that were reasonable, from the forfeiture of his lands* * * *. For the reasons stated, we hold that the system established by West Virginia, under which lands liable to taxation are forfeited to the State by reason of the owner not having them placed or caused to be placed, during five consecutive years, on the proper land books for taxation, and caused himself to be charged with the taxes thereon, and under which, on petition required to be filed by the representative of the State in the proper circuit court, such lands are sold for the benefit of the school board, *with liberty to the owner, upon due notice of the proceeding, to intervene by petition and secure a redemption of his lands from the for-*

feiture declared, by paying the taxes and charges due upon them, is not inconsistent with the due process of law required by the Constitution of the United States or the Constitution of the State.'' (The italics are ours.)

No State in the Union with the exception of the three States just mentioned, has any system of "forfeiture" at all. The limit of their power over the land of persons delinquent under their tax laws, is the power to subject their lands to sale for the collection of taxes; and this sale is everywhere conducted in the spirit, and with those safeguards for the owner's property rights, which are suggested by the statement quoted above from Judge Cooley. Everywhere the property must be advertised, described with sufficient accuracy for identification by bidders, and a liberal period for redemption given to the delinquent. It is because the West Virginia system of "forfeiture" so-called, insured substantially these same safeguards, that this Court in *King* v. *Mullins* found it to be constitutional.

Such has been the "due process" obtaining in the United States. But we are particularly concerned with the history of tax law enforcement in Kentucky, for the reason that this court has held that the test of due process is to be applied to the legislation of each State relative to an individual right, in terms of the "due process" obtaining in that State with reference to that right. *Walker* v. *Sauvinet, 92 U. S. 90 (93); Missouri* v. *Lewis, 101 U. S. 22 (31);* and *Hurtado* v. *California, 110 U. S. 516 (535).*

The system obtaining in Kentucky for tax law enforcement is typically representative of that in other States. The history of tax legislation in Kentucky is remarkable, however, by reason of the clear purpose manifested by the people to repudiate the idea of forfeiture of the lands of resident owners for tax delinquencies. The child of Virginia and impressed prenatally with the unique forfeiture feature of its mother's system, Kentucky did contemplate in its infancy, a system akin to that now obtaining in West Virginia which gave the right of redemption to the owner, but continually postponed putting even that into effect, and finally repudiated it altogether.

The Commonwealth of Kentucky was formed in 1792. In the same year the first tax law was enacted. Two years later, in 1794 (Littell's Statute Law of Kentucky, 1809), the General Assembly, for the first time, made it lawful for the sheriff, where the chattels of the delinquent should prove insufficient to pay the tax "to sell so much of each tract of land charged with the tax, as will be sufficient to pay the same." In 1799 a general revenue law was enacted (Moorhead & Brown's Digest Statute Laws of Ky., Vol. 2, page 1633) which provided at Section 18 for a sale by the sheriff of so much land only as shall be necessary for payment of the tax charged and unpaid, the delinquent himself having the right to indicate what portion is to be sold, and such right being furthered by a survey of such portion made by the county surveyor. In 1806 was passed an act (Moorhead & Brown's Digest, page 1639) which granted to delinquents a period of two years in which to redeem from any purchaser, land sold for taxes, by payment of the tax, interest and charges for

which the land might be sold, with interest thereon at the rate of one hundred per cent. per annum and by payment of the tax which may have accrued subsequently to the sale. The Act of 1822 (Moorhead & Brown's Digest 1377) repealed the power of the State to sell the land of a delinquent to resident citizens, and provided that "it shall be the duty of the sheriff to publicly cry the same off to the Commonwealth," provided, however, that the delinquent has a two years' period of redemption as before.

We shall now go back and trace the history of the penalty of forfeiture for failure to list. We shall find that the penalty of forfeiture, meaning a loss of the land, was never imposed by statute upon a delinquent; that "forfeiture" as used in the early legislation signified a vesting in the Commonwealth only as security for the taxes, with the right in the delinquent to redeem it fully by payment of the tax with interest; finally that the laws of Kentucky never did operate so as to forfeit the land of a citizen of the State even in this sense.

In 1792 (Littell Statute Law of Kentucky 1809), the Legislature provided that persons should forfeit their lands to the Commonwealth for failure to list them for taxation before February 4, 1795. In 1794, however (Littell Statute Law of Kentucky, Vol. 1, Chapter 158) the Legislature repealed so much of the Revenue Law as subjects lands to forfeiture for non-listing before February 4, 1795. Section 2 of the law, however, reinstated a forfeiture feature in the general tax law. In 1796 (Littell, Vol. 1, Chapter 254) the Legislature by Act of December 14th, provided that all lands forfeited under previous laws "are hereby re-vested in their respective

owners" and they are given one year from and after the passage of this law to list their lands in accordance with the revenue law. In January 1798 (Littell, Vol. 2, Chapter 37) the General Assembly enacted a law continuing the Act of December 14, 1796, in force until December 1, 1798, and providing, further, "that the titles of no persons whatever to lands within this Commonwealth shall be impaired because they have not listed in conformity to the said act." In the general revenue law of 1799, however (Littell, Vol. 2, Chapter 214), the penalty of forfeiture was impliedly repealed by Section 9 which imposed a fine of $10.00 and a treble tax for failure of an owner to list his land for taxation. Two years later, in 1801 (Moorhead & Brown's Digest, page 1072), a law was enacted providing that failure of an owner to list his land for taxation should work a forfeiture to the Commonwealth, with the proviso that the delinquent be given a period of two years in which to redeem his land by payment of taxes and ten per cent. interest. Evidently however, the Legislature repented even of this mild treatment of the delinquent, for by acts in 1804, 1806, 1808 and 1811, it extended to 1813, the period of redemption under the Act of 1801. .(Moorhead and Brown, Digest, pages 1073, 1074). Of interest in this connection is the preamble to the first of these acts of suspension, which reads:

> "Whereas many persons from ignorance or misfortune by failing to list their lands with the commissioner of tax, or auditor, agreeable to the provisions of the said recited act, have subjected them to forfeiture to the Commonwealth, whereby they

are much injured and the State not at all benefited: Therefore * * *."

On February 3, 1813, the Legislature (Littell, Vol. 5, page 60) abolished forfeiture as a penalty and provided that any citizen who may have omitted in past years to list his land for taxation, may do so for all preceding years and be subject only to the payment of a penalty which should be interest at the rate of twenty-five per cent. per annum on the amount of taxes due. On February 8, 1815 (Littell, Vol. 5, 289, Chap. 265), the penalty provided in the Act of 1813 was changed to a fine of $5.00 and triple taxes, and this was the extent of the penalty attaching to the failure of an owner resident in Kentucky to list his land until 1851 when the penalty was raised from $5.00 to $100.00.

The Act of January 12, 1825, to be found in Acts of Sessions of 1824-1825 at page 206 was an act to secure more effectually the *bona fide* occupants of land within the Commonwealth. The act concerns itself solely with the conflict of rights between those holding under the original grants and occupying claimants, and positively does not enact or re-enact any forfeiture provision. Section 8 of the act simply provides (Moorhead & Brown, page 1079) that "in all cases where any land shall hereafter be forfeited for failure to list for taxation, or stricken off to the State, the title to such lands shall vest in this Commonwealth by virtue of this act, without any inquest of office found, unless said lands shall have been redeemed according to law, etc." Thus the Act of January 11, 1825, does not in any respect in-

crease the scope of forfeiture which was at that time in effect; and at this time there were no laws in effect providing forfeiture of lands of citizens for present or future delinquencies.

In Barbour v. Nelson, 1 Littell, 60, the Court of Appeals held that the Forfeiture Act of 1801 was invalid, because it did not provide for an inquest of office found before the vesting of the title in the Commonwealth.

In Marshall v. McDaniel, 12 Bush, 378, the same court held that the Act of January 12, 1825, above quoted, was unconstitutional and void, because it did not provide for an "inquest of office found." The court did not decide that a forfeiture was provided for by the terms of this law.

It is thus seen that there never was in the history of Kentucky a valid law for forfeiting lands for a failure to list or pay taxes thereon.

The Court of Appeals of Kentucky has held that forfeiture of land for a violation of tax laws is, by reason of its unusual and unreasonable severity, a violation of the requirements of due process, in *Shaw* v. *Robinson*, 111 Ky. 715. The court was passing upon the validity of an Act of 1892 which was as follows:

> "That no action shall be maintained for the possession or recovery of any lands lying within this State, where the claimant relies alone for the recovery or possession of said lands on any grant or patent issued by the Commonwealth of Virginia or the Commonwealth of Kentucky prior to the year one thousand eight hundred and twenty, against any person

claiming such land by possession to a well-defined boundary under a title of record, unless said claimant has actually paid or caused to be paid the State and local taxes assessed against said land for at least twenty years next preceding the bringing of said action."

The court in brief language repudiated the law, saying in part:

"This statute is evidently unconstitutional, for the reason, among other things, that it in effect forfeits or destroys the title to real estate simply for the non-payment of taxes; * * * We do not think the act is in any respect valid. It seems to us an attempt upon the part of the Legislature to divest the party of a title already acquired without due process of law."

Kentucky has in its history defined "due process" with reference to the power of the State over the land of a tax-delinquent citizen, in the same terms as it has been defined by nearly every State in the Union. It has exercised no greater power than the one to make a sale of land for unpaid taxes with right of redemption in the delinquent. And with respect to advertisement of such sale and description to bidders, Kentucky has been even more solicitous than her sisters. In Chapter 84 of Laws of 1871-1872, the Legislature imposed upon the sheriff selling land for the realization of unpaid taxes, the duty to do so "in the same manner as lands are sold under execu-

tion." Substa ally the same provision exists in the Statutes of 1903 (Section 4151) and in the Statutes of 1909 (Section 4149). Thus did Kentucky finally and emphatically commit herself to the principle expressed by Judge Cooley that the State shall, in the enforcement of its tax laws, impose only such hardship upon the delinquent as may be necessary for the collection of the debt due to the State, and shall protect the citizen's property interests here, as carefully as in its court procedure for the collection of private debts.

Article III then unquestionably violates the due process requirement of the Constitution in two ways:

First, It cuts down the period for the enforcement of the delinquent owner's right of action in ejectment against occupying claimants, without leaving a reasonable time for the institution of such action.

Second, In its provisions for the vesting of the delinquent's property in adverse claimants to the extent of their occupancy, and in its provisions for a public sale of the land remaining in the delinquent, which, as construed by the Kentucky Court of Appeals, omit any requirement for a description of such remaining land to bidders, and must necessarily result, therefore, in a practical destruction of the value of the delinquent's interest, it is unnecessarily harsh, oppressive, and arbitrary, and ignores the recognized safeguards for the protection of the interests of the individual under such conditions, which are required by "due process of law."

CONCLUSION.

Here we conclude our examination of Article III. Even in this somewhat lengthy analysis, we have failed to point out some of its vices, for there are still other respects in this case in which it violates the three constitutional prohibitions which we have brought to bear upon it. Under other states of fact, phases of its unconstitutionality appear where it undertakes to exercise still further powers which are forbidden to the States. Article III was a piece of legislation impetuous, intemperate, subversive of private rights and unique in the annals of American tax legislation. Forming part of a revenue law, and ostensibly directed to the collection of unpaid taxes, it is in fact primarily directed toward wresting lands affected by it from inactive owners and securing them to occupying claimants. In pursuance of this purpose, it retroactively bases the penalty of forfeiture, without right of redemption, upon past omissions, and seeks to conceal the illegality of this *ex post facto* exercise of power behind pretended opportunities for "extinguishment" and "purchase back" which are themselves either physically impossible of actual employment or laden with *ex post facto* penalties. Investing such merciless destruction of individual rights with the forms of technical notice and hearing, and superficially borrowing phrases from the tax law of another State which has been held valid, can not save it from this Court's condemnation as an *ex post facto* law and as taking property without due process of law. But even before and beyond all this, the

framers of Article III in their absorbed pursuance of their purpose to have it operate unfailingly in favor of occupants, unguardedly stumbled into a fundamental unconstitutionality of their law. In its selection of persons marked for its operation, Article III has arbitrarily named a certain exclusive class of present-delinquent owners whose interest shall be subject to forfeiture; and this classification, irrational and unsupportable, is a denial to the persons of that class of the equal protection of the laws.

With our firm belief that this court will reverse the judgment entered below, this case is

Respectfully submitted,

WILLIAM B. DIXON,
LOUIS B. WEHLE,
Counsel for Plaintiff in Error.

SUPREME COURT OF THE UNITED STATES.

KENTUCKY UNION COMPANY, - - *Plaintiff in Error,*

vs.

COMMONWEALTH OF KENTUCKY, - *Defendant in Error.*

STATEMENT OF POINTS AND AUTHORITIES.

Article III of "An Act Relating to Revenue and Taxation," enacted by the General Assembly of the Commonwealth of Kentucky, at its regular session in the year 1906, and which was approved March 15, 1906, violates the Constitution of the United States, for:

I.

IT IS AN EX POST FACTO LAW.

Kentucky Statutes, 1903 Ed. Secs. 4241, 4021.
Citizens National Bank of Lebanon v. Commonwealth, 118 Ky. 51.
Chicago Railroad v. Commonwealth, 115 Ky. 278.
Commonwealth v. Nute, 115 Ky. 239.
Kentucky Statutes, 1903 Ed., Sec. 4152.
Campbell v. Thomas, 9 B. Mon. 82.

New Domain Oil & Gas Co. v. Gaffney Oil Co., 121 S. W. 699.

Ballowe, etc. v. Hillman, etc., 18 Ky. L. R. 677, 37 S. W. 950.

Breathitt Coal, Iron & Lumber Co. v. Strong, 106 Ky. 699.

Kidd v. Central Trust & Safe Deposit Co., 23 Ky. L. R., 1402, 65 S. W., 355.

Helton v. Central Trust & Safe Deposit Co., 24 Ky. L. R. 628, 69 S. W. 720.

Bryant v. Kendall, 25 Ky. L. R. 1859, 79 S. W. 186.

Goff v. Lowe, 25 Ky. L. R. 2176, 80 S. W. 219.

Steele v. Bryant, 116 S. W. 755.

Kentucky Statutes, 1903 Ed. Secs. 4056, 4058.

Acts of the General Assembly of the Commonwealth of Kentucky of 1906, Sec. 16, page 101, page 104.

Cooley "Constitutional Limitations," 5th Ed. p. 323.

Fletcher v. Peck, 6 Cranch, 87.

Watson v. Mercer, 8 Pet. 110.

Cummings v. Missouri, 4 Wall. 277.

ex parte Garland, 4 Wall. 333.

Pierce v. Carskadon, 16 Wall. 234.

Locke v. City of New Orleans, 4 Wall. 172.

Burgess v. Salmon, 97 U. S. 381.

Kring v. Missouri, 107 U. S. 221.

II.

IT DENIES TO PERSONS, OF WHOM THE PLAINTIFF IN ERROR IS ONE, THE EQUAL PROTECTION OF THE LAWS.

Wurtz v. Hoagland, 114 U. S. 606.

American Sugar Refining Co. v. Louisiana, 179 U. S. 89.

Western Union Telegraph Co. v. Indiana, 165 U. S. 304.

King v. Mullins, 171 U. S. 404.

Kentucky Railroad Tax Cases, 115 U. S. 321.

Gulf, Colorado and Sante Fe Railway Co. v. Ellis, 165 U. S. 150.

Bell's Gap R. R. Co. v. Pennsylvania, 134 U. S. 232 (237).

III.

IT TAKES THE PROPERTY OF THE PLAINTIFF IN ERROR WITHOUT DUE PROCESS OF LAW, FOR

A. IT CUTS OFF THE OWNER'S RIGHT OF ACTION IN EJECTMENT AGAINST ADVERSE OCCUPANTS.

Kentucky Statutes, 1903, Section 2505.

Constitution of Kentucky, Section 55.

Batterton v. Chiles, 12 Ben Monroe (Ky.) 348 (352).

Kentucky Statutes 1909, Sections 963, 965.

Kentucky Statutes 1903, Section 975.

Kentucky Statutes 1903, Section 1563.

Kentucky Code of Civil Practice, Sections 107, 342, 745, 367A, Subsections 1 and 11.

Wheeler v. Jackson, 132 U. S. 255.

Sturgis v. Crowninshield, 4 Wheaton, 122 (207).

Piatt v. Vattier, 1 McLean, 146 (158).

Koshkonung v. Burton, 104 U. S. 668 (675).

Berry v. Ransdall, 61 Ky. (4 Met.) 292.

Price v. Hopkin, 13 Mich. 318.

Osborne v. James, 17 Wis. 573.

Rodenbaugh v. Philadelphia Traction Co., 190 Pa. St. 358.

Soper v. Lawrence Brothers, 201 U. S. 359.

B. THE TERMS OF FORFEITURE IMPOSED BY IT ARE ARBITRARY AND EXCESSIVE.

Story on the Constitution, 4th Ed. Sec. 1943.

Cooley "The General Principles of Constitutional Law," 3d Edition, page 241.

Hager v. Reclamation District, 111 U. S. 701 (708).

Lake Shore and Michigan Southern R. Co. v. Smith, 173 U. S. 698.

L. & N. R. R. Co. v. Central Stock Yards Co., 212 U. S. 132.

Lessees of Livingston v. Moore, 7 Peters, 463, 493, 551.

Statute of Westminster, Second, 13 Ed. 1, Chap. 18.

46 and 47 Victoria, chapter 52.

25 Geo. III, Chapter 35, Section 1.

Tyrwhitt & Tyndale, Digest of English Statutes, page 1822.

Tidd's Practice, Vol. 2, page 1069.

1 George IV, Chapter 73, Section 9.

Cooley "Law of Taxation," 3d Ed., Vol. 11, page 1023.

King v. Mullins, 171 U. S. 404.

Walker v. Sauvinet, 92 U. S. 90 (93).

Missouri v. Lewis, 101 U. S. 22 (31).

Hurtado v. California, 110 U. S. 516 (535).

Littell's Statute Law of Kentucky, page 1809.

Moorhead & Brown's Digest of Kentucky Stats., Vol. II, pages 1633, 1639, 1377.

Littell's Statute Law of Kentucky, Vol. 1, Chapter 158; Chapter 254.

Littell's Statute Law of Kentucky, Vol. II, Chapter 37; Chapter 214.

Moorhead & Brown's Digest of Kentucky Stats., pp. 1072, 1073, 1074.

Littell's Statute Law of Ky., Vol. V., page 60; Chapter 265, page 289.

Acts of 1851, Kentucky General Assembly, Chapter 14.

Moorhead & Brown's Digest of Ky. Statutes, page 1079.

King v. Hatfield, 130 Fed. 564.

Barbour v. Nelson, 1 Litt. 60.

Marshall v. McDaniel, 12 Bush, 378.

Shaw v. Robinson, 111 Ky. 715.

Acts of 1871-1872, Kentucky General Assembly, Chapter 84.

Statutes of Kentucky 1903, Section 4151.

Statutes of Kentucky 1909 (Carroll), Section 4149.

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CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 22.

KENTUCKY UNION COMPANY, PLAINTIFF IN ERROR,

vs.

COMMONWEALTH OF KENTUCKY, DEFENDANT IN ERROR.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF KENTUCKY.

SUPPLEMENTAL BRIEF FOR PLAINTIFF IN ERROR.

WILLIAM B. DIXON,
LOUIS B. WEHLE,
Counsel for Plaintiff in Error.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 22.

KENTUCKY UNION COMPANY, PLAINTIFF IN ERROR,

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SUPPLEMENTAL BRIEF FOR PLAINTIFF IN ERROR.

May it please the court.

There are some considerations with respect to the *ex post facto* and due process contentions of the plaintiff in error which, owing to certain questions asked at the hearing, seem to call for additional statement.

I.

The first question which we shall here discuss is this: Although the requirement, as part of the proceedings in the county court provided for the extinguishment by the delinquent of the cause for forfeiture, that the delinquent pay interest of 30 per cent and a penalty of 15 per cent by *ex post facto*, was it a necessary condition of the Kentucky Company's resisting forfeiture, that it first file its petition in

the county court, and in the proceedings thereunder refuse to pay the interest and penalties?

This question, we submit, could not arise unless it were assumed, first, that the provisions requiring payment of the interest and penalties are separable for the remainder of the statute, and, second, that the delinquent in such a position as the plaintiff in error is able to divine in advance of any court's decision that such provisions are legally separable. However, supposing for a moment even the validity of these two extraordinary assumptions, the question stated above must be answered in the negative; that the delinquent did not have to seek relief in a certain form where the statute provides that relief sought in such form shall be denied. The law will not require the doing of a vain and useless thing. Just as in the law of contracts, necessity of a tender is dispensed with where it clearly appears that a tender will not be accepted (Tibbs *vs.* Timberlake, 4 Litt. (Ky.); Stapp *vs.* Phelps, 7 Dana (Ky.), 296; Gotham *vs.* Farson, 119 Ill., 425; Hamilton *vs.* McLaughlin, 145 Mass., 20), so in relations between the State and the individual, the necessity of tendering performance of an act is dispensed with where it clearly appears that the State will not accept the tender. In the first case one party is protected in relying upon the statement of the other party that he will refuse the tender; in the second case the individual is protected in assuming that the State officer will perform his duty as the statute requires of him. In support of the contention that the appellant should have filed his petition to list and should have tendered the amount of the tax in order to escape forfeiture—the principle in the law of taxation has been cited—that an individual may not have the extraordinary remedy of injunction against the enforcement of an illegally excessive tax unless he shall have tendered to the tax officer the legal amount where that amount is ascertainable. Far from arguing against our contention, this situation is, when finally analyzed, a striking illustration of the very principle which

we have just stated for this reason: The tax assessed is in excess of the amount which the statute authorizes, and therefore to that extent illegal; but in granting the extraordinary remedy of injunction against a State officer the court will presume until actual refusal that the State officer will accept the legal amount if tendered. In other words, here is an illustration of the principle that it will be presumed that an officer will perform a duty as the statute directs. In this situation the law stringently insists upon this presumption even as against an individual who has, on the basis of the officer's own conduct in sending out an excessive tax bill, every reasonable ground for belief that the officer will undertake to perform his duty otherwise than as the statute directs. Compelling, then, is the presumption in the situation at bar, that upon an adjudication by the county court after petition filed, adjudging the amount of the taxes which ought to have been assessed in past years, the sheriff, in obedience to the law of the State, would refuse to accept the tender by the owner of the amount of those taxes without the interest and penalties as required by the statute, and the owner will be protected in relying upon that presumption.

So far we have been assuming that the provisions of article III respecting the *ex post facto* 30 per cent interest and 15 per cent penalty might be stricken out and the remainder of the article be left capable of execution in accordance with the intent of the legislature. But we believe that this court will quickly find upon an examination of article III that if these provisions are stricken article III is left in a form in which it may not be held that the legislature would have intended it to be enforced; that, to use the words of Judge Hobson in the dissenting opinion (page 22 of the record)—

> " this is an essential part of the whole scheme of the
> " act, and it cannot be presumed that the legislature
> " would have passed the act without this."

Examining even the first eight sections of the act, where provision for or reference to the interest and penalties is made, we find a clear, unqualified requirement utterly without ambiguity that payment of the interest and penalty is a necessary part of the means for extinguishing the cause for forfeiture. But section 9 is a plain, unmistakable, positive declaration by the legislature that it intends the payment of interest and penalties to be a necessary, essential part of the extinguishment proceedings.

> " No owner or claimant of any land in this Com-
> " monwealth shall be allowed to prevent the opera-
> " tion of this article by the payment, after January
> " 1st, 1906 (ten weeks before article III was enacted),
> " of any amount less than the whole of the unpaid
> " taxes, interest and penalties provided by law, that
> " were charged, and that should have been charged
> " against said owner or claimant of said land and
> " those under whom he claimed, as of each and all
> " of said five dates, first mentioned in section 1
> " hereof." (Our parentheses.)

This is an outright declaration by the Legislature that the payment of interest and penalties was intended by it to be as essential a part of the operation of the law as the payment of the tax itself. There is no way to separate the items. The Legislature *expressly* says that payment of *any* sum less than the *whole* of the taxes, interest and penalties will result in forfeiture. In other words, the Legislature plainly and unequivocally declared its intention that there could be no separation of the obligation to pay the penalties and interest from the obligation to pay the tax itself. It was not a legitimate occasion for the exercise of any method of construction when the Kentucky Court of Appeals undertook to say that the Legislature apparently intended that payment of the tax should, without payment of the interest and penalties, operate as an extinguishment of the cause for forfeiture, for the reason that the Legislature had *expressly* declared that it intended that forfeiture should operate under

article III unless interest and penalties are paid. However much this court might feel bound to follow a statement by the highest court of a State of the meaning to be placed upon a statute of that State where the statute admits of construction, and where the State court has undertaken to construe it, this court is not bound to follow a suggestion by the State court as to the intention of the Legislature as expressed by words that admit of no construction at all. In order for a legitimate occasion for construction to arise, there must first be uncertainty as to meaning. Here there was no undertaking on the part of the court to construe the meaning of any words of article III. The court simply expressed its opinion at to the legal effect of the statute, saying: "The penalty and interest can be stricken out, and that which remains is complete within itself, and capable of being executed in accordance with the apparent legislative intent." Here there is no *construction* within the proper definition of that word, but a mere declaration of opinion by the court as to the intention of the Legislature, which opinion does not claim to be based upon construction at all. In a score of cases this court has reiterated or approved of its declaration in *United States vs. Fisher*, 2 Cranch, 358, that "there "is no ground for judicial construction of a Statute where "the legislative intention is plain, the language being with-"out ambiguity." Some of these cases are: *Lewis vs. U. S.*, 92 U. S., 617 (621); *Doggett vs. Florida R. R. Co.*, 99 U. S., 72; *Bate Refrigerating Co. vs. Sulzberger*, 157 U. S., 1.

Although this court will be bound by the declaration of the highest court of a State, as to the meaning of a statute of such State, in a case where there has been a real construction by that court and where that construction was necessary for the decision of an issue in that case, this court has held that it will not be bound by such declaration of the legal effect of the statute where it was not the result of a construction of the statute. This was held in *Town of Venice vs. Murdock*, 92 U. S., 494. A suit had been brought upon

certain town bonds. The statute provided that the supervisor and commissioners should not have power to issue the bonds until the written assent of two-thirds of the resident taxpayers should have been obtained by such supervisors or commissioners and filed in the office of the county clerk together with the affidavit of such supervisor and of any two commissioners attached to such affidavit to the effect that the persons whose written assent are hereto attached comprise two-thirds of all the resident taxpayers of the town. The case came to this court on error to the Circuit Court based on the ruling that the certificate of the supervisor and commissioners estopped the town from disputing the genuineness of the signatures assenting to the issuance of the bonds, and that the bondholder need not prove such genuineness. In two cases decided by the New York Court of Appeals—*Starin vs. Town of Genoa* and *Gould vs. Town of Sterling*, both reported in 23 N. Y., 439, 456—the New York court had held that the statute apprised the bondholders "that the bonds could not be legally issued until the requisite assent was obtained," that the certificate of the supervisors and commissioners was not binding upon the town, and that therefore the bondholders must affirmatively prove the assent of the requisite number of taxpayers. An examination of the New York cases discloses that this statement of the effect of the statute is not accompanied by any close analysis of its wording, and that the intention of the Legislature is induced rather from analogy of certain general principles of law, than from any use of the methods of construction. This court, construing the statute, held that the certificate of the town officers was conclusive evidence of the genuineness of the written assent of the two-thirds of the taxpayers, and that affirmative proof did not have to be made by the bondholders, and gave the following reasons for not following the New York court's declaration as to the meaning of the statute:

> "*It is argued, however, that the New York de-*
> "*cisions are judicial constructions of a statute of*

"*that State; and, therefore, that they furnish a rule* "*by which we must be guided. The argument would* "*have force if the decisions, in fact, presented a clear* "*case of statutory construction; but they do not.* "They are not attempts at interpretation. They "would apply as well to the execution of powers or "authorities granted by private persons as they do "to the issue of bonds under the statute of April 16, "1852. They assert general principles, to wit, that "persons empowered to borrow money and give "bonds therefor, for the purpose of paying it to an "improvement company, are not authorized to de- "liver the bonds directly to the company; a doctrine "denied in this court, in the Supreme Court of "Pennsylvania, and even in the Court of Appeals of "New York. People *ex.* Mead, 24 N. Y., 124; The "Town of Venice *vs.* Woodruff *et al.*, 62 *id.*, 462. "They assert, also, that, where an authority is given "to an officer to execute and issue bonds (on the as- "sent of two-thirds of the voters of a town, the as- "sent to be obtained by the officer and filed in a "public office, with an affidavit verifying the assent), "the verification amounts to nothing, subserves no "purpose and that a *bona fide* holder of the bonds is "bound to prove that the requisite number of voters "did actually assent. *They assert this as a general* "*proposition. They do not assert that the statute* "*so declares, or that such is even its implied requisi-* "*tion. There is, therefore, before us, no such case* "*of the construction of a State statute by State courts* "*as requires us to yield our own convictions of the* "*right, and blindly follow the lead of others, emi-* "*nent as we freely concede they are.*" (The italics are ours.)

The considerations on the basis of which this court refused to follow the New York court's statement as to the rights of the bondholder under the New York statute apply here in the case at bar. In the New York case the New York court had not undertaken to interpret the meaning of any statutory words, but had based its holding that the bond-

holder must make affirmative proof upon the existence of general principles of law. Here also there is no semblance of interpretation or construction; and the suggestion of the Kentucky Court of Appeals that the delinquent had the right to list his land by petition without the payment of interest or penalties is based merely upon the existence of a general principle of constitutional law which invalidates the interest and penalty. This court's reasoning in *Town of Venice vs. Murdock* is the more compelling as applied here by reason of the fact that the meaning of the New York statute was not clear with respect to the kind of proof which a bondholder should make, whereas, in the case at bar, with respect to the intent and penalty, the meaning of article III is inexorably plain. If the provisions requiring the payment of interest and penalties were indeed separable, we are confident that there is no canon of constitutional law which could demand that the delinquent must divine this at his peril and then tender the tax to an officer under conditions in which the statute declares that the officer shall not accept it; but we are convinced that this court will find them not separable notwithstanding the suggestion in the majority opinion of the Kentucky Court of Appeals to the contrary.

II.

Section 1 of article III applies to an owner who shall have become subject by reason of his delinquencies to a "cause for forfeiture." If the terms of the cause for forfeiture are invalid, then no owner might ever become subject to them; and consequently section 1, with its requirement for listing by petition in the county court before January 1, 1907, can apply to no one. When we have determined that the penalty of forfeiture is unconstitutional for any reason, there is then no owner in existence who can have incurred the cause for forfeiture, and hence no person

in existence upon whom there would rest a duty to list his land by petition in the county court, there would then rest upon persons, one and all, including the plaintiff in error, who have omitted to list their lands in past years, only the simple duty imposed by the general tax law to list their lands retrospectively with the county clerk without the payment even of interest.

III.

With respect to due process of law we omitted to mention in our printed argument, although we emphasized at the hearing, that provision of article III which works a real destruction of all of the Kentucky Union Company's interest in the 40,000-acre tract of land. When the point was made that article III furnishes a means for evasion of the law against champetry, by affording to an owner of land adversely held an opportunity by deliberate delinquency to effect a transfer of it, the Kentucky Court of Appeals said (page 20 of the Record):

> "If the occupant has had five years' possession, "coupled with payment of taxes, the forfeited title "devolves upon him. If he has not had possession "for a sufficient time to cause a vestiture of title in "him, he is nevertheless in possession, and as a sale "of the forfeited title to the extent of his possession "would be champertous, the title thereto remains in "the Commonwealth, and the possession of such oc"cupant or the certainty thereof, is not in any man"ner affected thereby. The title to those parts not "transferred to the occupant, or which is not ad"versely held, is alone the subject of sale, and the "title to only such parts would pass upon a sale in "gross."

The above construction makes article III totally destructive of the Kentucky Union Company's property interest, because, on page 17 of the record, the Kentucky court has

said: "Practically, if not quite all, the land described in the petition is adversely held by occupants under claim or color of title." Even if none of the forfeited land should vest, then, in five-year occupants under section 6, nothing would pass to a bidder under the commissioners' sale.

Respectfully submitted,

WILLIAM B. DIXON.
LOUIS B. WEHLE.

SUPREME COURT OF THE UNITED STATES.

KENTUCKY UNION COMPANY, PLAINTIFF IN ERROR,

vs.

COMMONWEALTH OF KENTUCKY, DEFENDANT IN ERROR.

POINTS AND AUTHORITIES IN SUPPLEMENTAL BRIEF.

I.

The requirement to pay 30 per cent interest and 15 per cent penalty as part of the proceeding for extinguishment of the cause for forfeiture, which the Kentucky Court of Appeals has held to be *ex post facto*, may not be stricken out of Article III because it is not separable from the other requirements for the extinguishment of the cause for forfeiture. The suggestion of the Kentucky Court of Appeals that the said requirement may be stricken and Article III still enforced "in accordance with the apparent legislative intent," is not binding upon this court, for it is not a construction.

United States *vs.* Fisher, 2 Cranch, 358.
Lewis *vs.* United States, 92 U. S., 617 (621).
Doggett *vs.* Florida R. R. Co., 99 U. S., 72.
Bate Refrigerating Co. *vs.* Sulzberger, 157 U. S., 1.
Town of Venice *vs.* Murdock, 92 U. S., 494.

Even if the requirement to pay the interest and penalty were separable, a delinquent, until there has been a judicial decision to that effect, is protected in relying upon the presumption that a petition to list his land, without offering to pay the said interest and penalty, would be rejected.

Tibbs *vs.* Timberlake, 4 Litt., 10.
Stapp *vs.* Phelps, 7 Dana (Ky.), 296.
Gotham *vs.* Farson, 119 Ill., 425.
Hamilton *vs.* McLaughlin, 145 Mass., 20.

II.

The requirements of section 1, relative to listing by petition in the county court, apply only to owners who have become subject to the "cause for forfeiture." If the terms of forfeiture are invalid the requirements of section 1 do not exist.

III.

The construction of Article III by the Kentucky Court of Appeals, whereby forfeited land held by occupants, irrespective of the duration of their possession, does not pass under the sale by the commissioner, works a total destruction of the plaintiff in error's interest in a tract of 40,000 acres.

Supreme Court of the United States.

KENTUCKY UNION COMPANY, - - *Plaintiff in Error,*

vs. BRIEF FOR PLAINTIFF IN ERROR.

COMMONWEALTH OF KENTUCKY, - *Defendant in Error.*

APPENDIX TO BRIEF.

ARTICLE III OF THE ACT ENTITLED "AN ACT RELATING TO REVENUE AND TAXATION," PASSED BY THE GENERAL ASSEMBLY OF THE COMMONWEALTH OF KENTUCKY IN THE YEAR 1906, AND APPROVED MARCH 15, 1906.

ARTICLE III.

Relating to land title—old land grants, etc.

§ 1. It shall be the duty of each and every owner or claimant of land to pay all the taxes which have been assessed, and which should have been assessed, against him, and those under whom he claims, as the owner or claimant of said land as of the 15th day of September, 1901, the 15th day of September, 1902, the 15th day of September, 1903, the 1st day of September, 1904, and the 1st day of September, 1905; and if the said owner or claimant, or those under whom he claims, has failed to list said land, or any part thereof, for taxation, as of said dates, or any of them, it shall be his duty to have same assessed and listed for taxation, in the manner and within the time hereinafter provided, as of

each of said dates for which the assessment has been omitted, and to pay the taxes, interest and penalties thereon as herein provided.

The fact that said land has been listed for taxation, or the taxes have been paid thereon, by another claimant, shall not relieve against the duty herein imposed.

Failure to list land.

If any such owner or claimant, or those under whom he claims, has failed to list such land for assessment and taxation, as of any three of said dates, or has failed to pay the taxes charged, or which should have been charged against him, or those under whom he claims, as the owner or claimant thereof upon said dates, for any three of the years for which said assessments were, or should have been made, said owner and claimant and those under whom he claims are hereby declared to be delinquent; and such failures, or either of them, shall be cause for the forfeiture and transfer to the Commonwealth of his said claim and title thereto, in a proceeding to be instituted for that purpose, as hereinafter provided. But said cause for forfeiture shall be extinguished if said owner or claimant, his heirs, representatives, or assigns, shall, within the time and in the manner in this article provided, cause said land to be assessed for taxation, and, on or before March 1, 1907, pay the taxes charged, and which should have been charged against him, or against those under whom he claims, as the owner or claimant thereof, for each and all of said five years, for which he or those under whom he claims are delinquent, together with the interest and penalties provided by law in case of the redemption of land sold for the non-payment of taxes.

Assessment made on application of owner.

§ 2. The ascertainment of the amount of taxes unpaid and the assessments required by the preceding section shall be made by the county court wherein the land lies, upon the the application of said owner or claimant, by a petition veri-

fied by himself or his agent, filed in said court on or before January 1, 1907, in which the land sought to be charged shall be described, so as to be identified, and the years for which it was listed and the years in which the taxes were not paid shall be stated, and in which also shall be stated the grant under which he claims, if he derives title from a grant, and the instrument through or the manner in which the title devolved upon him. Said application shall be set for a hearing upon a day to be fixed by the applicant, not less than ten nor more than twenty days after the filing of the petition, of which he shall give at least ten days' written notice to the county attorney, whose duty it shall be to attend said hearing and represent the State and county; for which service he shall receive as compensation ten per centum of the amount ultimately collected by sale or otherwise, by virtue of such delinquency.

It shall be the duty of the county court to decide upon said application in a summary manner, upon such evidence as may be offered, having due regard to the value of adjacent property as of said dates, and to ascertain the amount of unpaid taxes which the applicant and those under whom he claims should have paid for any and all of said years, whether assessments were originally made as of said dates or not. Upon finding the amount, the court shall also ascertain the proportion of such taxes due for county and State purposes at the rates fixed by law for such years; and shall cause a record of the findings to be made on the order book of the court, and certified to the Auditor of the State and county clerk. Should the court find that the land has been assessed against such owner or claimant, or those under whom he claims, as of any of said dates, it shall accept such assessment as a basis upon which to ascertain the amount of unpaid taxes for the year such assessment may have been made.

Appeal to circuit court.

Either the petitioner or the Commonwealth, feeling aggrieved by the finding of the county court, shall have the right to take an appeal, within thirty days after the entry of the finding of the county court, to the circuit court for said county, in the manner that other appeals are taken, except that no bond shall be required of the Commonwealth.

It shall be the duty of the circuit court to hear and determine said application de novo, and to give it precedence over all other civil business in said court. The finding of the circuit court shall be conclusive and not subject to appeal. A copy of the findings shall be certified to the Auditor of the State and to the clerk of the county court.

As soon as the time for appealing from the finding of the county court has expired, if no appeal is taken, or as soon as the final order of the circuit court is entered, if an appeal is taken, the obligation of said owner or claimant to pay the taxes therein called for, with interest and penalties, as provided by law for the redemption of land sold for the non-payment of taxes, shall be complete; and the same shall be paid to the sheriff of the county within thirty days thereafter. Provided, however, that if in a proceeding hereunder begun within the time herein allowed, the amount payable by the delinquent shall not be finally determined until within less than thirty days before March 1st, 1907, or until after said date, then the right of forfeiture as set out in section 1 of this article shall not be complete in the Commonwealth, unless and until said delinquent shall have failed to pay said amount, interest and penalties, for thirty days after the entry of said order.

Upon collecting said taxes, interest and penalties, the sheriff shall, after paying the costs of the proceedings and retaining the commission allowed by law for himself, pay over and account for the remainder to the Auditor of the

State and to the county, in the same manner and subject to the same responsibilities of himself and his bondsmen as in the case of other taxes collected by him. Out of the amount so paid, there shall be paid to the county attorney ten per centum thereof and an additional ten per centum to the Commonwealth's attorney, should an appeal have been prosecuted to the circuit court.

Suit by Commonwealth's attorney.

§ 3. If any such owner or claimant shall fail to have said land assessed, or fail to pay the taxes charged, or which should have been charged against him, or those under whom he claims, as the owner or claimant of any such tract of land, as provided and within the time prescribed in sections 1 and 2 of this article, together with the penalties and interest as provided by law, then it shall be the duty of the Commonwealth's attorney to institute in the circuit court of the county in which said land or any part thereof lies, a proceeding in equity, in the name of the Commonwealth of Kentucky as plaintiff against said track of land, and the owners or claimants of said land as defendants, naming them if their names are known to him, and if their names are unknown to him, designating them as the unknown owners and claimants thereof, for the purpose of declaring the title or claim of said defendants forfeited to this Commonwealth, and selling same. The suit so instituted shall be proceeded with to final judgment in all respects as other equity causes so far as applicable.

In addition to the requirements of the Civil Code of Practice respecting process and service thereof, notice shall be given of the pendency of said action by posting a copy of the petition at the front door of the court house, which shall be done by the clerk immediately after the petition is filed, and he shall show by endorsement upon the original petition the time at which said copy was so posted. The defendants

shall not be required to answer until after the expiration of thirty days from the posting of said copy. And such copy, when so posted, shall be deemed notice to all defendants of the pendendy of said action and its object.

The petition of the plaintiff shall allege the facts constituting the cause of forfeiture under the provisions of this article, and there shall be filed with it a copy of the grant or instrument upon which the title or claim sought to be forfeited is based; and no other title, claim or possession, or continuity thereof, whether owned or claimed by the defendant or by others, shall be forfeited or in any manner affected by said proceeding. The prayer shall be for a judgment of forfeiture and sale of the title or claim in the petition described

The court shall render judgment in accordance with the pleadings, exhibits and evidence adduced; and if it shall find that said title or claim sought to be forfeited is or has been subject to forfeiture under the provisions of this article, it shall render judgment declaring the same forfeited and the title thereto vested in the Commonwealth. Such judgment shall operate as a transfer to, and vesting in, the Commonwealth of the said title and claim of each and all the defendants, and those under whom they claim, without execution of deed or other instrument. If the court shall find that the same is not subject to forfeiture under the provisions of this article, then it shall so adjudge and dismiss the petition of plaintiff.

Judgments conclusive.

Judgments rendered by the circuit court under this article shall be conclusive as against all defendants, including infants, lunatics and married women, as to their title or claim derived through or under the grant, title or claim described in the petition; and said judgements and the proceedings upon which they are based shall not be subject to

the provisions of sections 391, 410, 414 or 574 of the Civil Code of Practice. Issues as to whether or not the title and claim sought to be forfeited is or has been subject to forfeiture under the provisions of this article, shall be triable by jury; and the judgment of the court shall be in accordance with the verdict, as in ordinary actions.

Appeals to Court of Appeals in 30 days.

Either party may prosecute an appeal from such judgment to the court of appels within thirty days after the same may be entered; but if any such appeal be prosecuted, the transcript of the record shall be filed in the court of appeals within sixty days after the entry of said judgment; and the hearings upon appeal shall have the same precedence as other Commonwealth cases. No bond on appeal shall be required of the Commonwealth.

§ 4. If, before or during the term of the circuit court next succeeding the term at which a judgment of forfeiture may have been entered, as authorized by section 3 of this article, any of the said defendants, in privity with the title so forfeited to, and vested in the Commonwealth, file his counter claim in said action, accompanied by a bond, with good and sufficient resident personal security, to be approved by the court, if in session, otherwise by the clerk of the court, conditioned to pay, and in all respects abide by and perform, the judgment that the court may enter upon such counter claim, and in said counter claim offer to purchase back from the Commonwealth the title and claim in said action so forfeited to, and vested in, the Commonwealth, and praying to be allowed so to do, and exhibiting title thereto in himself, it shall be the duty of the court, upon proper pleadings as in other equity cases, and upon such evidence as may be adduced in the manner authorized by law, to ascertain and adjudge the amount of unpaid taxes, charged, and that ought to have been charged, against the defendant and those under

whom he claims, as the owner or claimant of said land, for the fifty years immediately preceding the filing of such counter claim, and if the court finds and adjudges that said defendant is the owner of the title so forfeited to and vested in the Commonwealth, to enter a judgment against such defendant for a sum equal to the amount of the unpaid taxes charged, and that ought to have been charged, against said defendant, and those under whom he claims as the owner or claimant of said land, for said fifty years, together with interest thereupon at the rate of 15 per cent. per annum from the time of the said unpaid taxes for said several years were due, and the costs of the proceedings, including a reasonable attorney fee for the Commonwealth's attorney, to be fixed by the court. Provided, that no person except a defendant, and no defendant, except as herein provided, shall be allowed to purchase back from the Commonwealth the title so forfeited to, and vested in it, except such defendant as may, but for such forfeiture, establish in such proceeding a title thereto in himself upon which he could maintain an action of ejectment.

If, thereupon, such defendent shall pay to the sheriff the amount of such judgment, it shall be the duty of the court to enter a judgment re-transferring to such defendant the title and claim so forfeited to, and vested in, the Commonwealth ; and said judgment shall have the effect of re-transferring and vesting same in said defendant without the execution of a deed or other instrument.

Forfeiture to be entered—when

Should such defendant not thereupon pay said judgment, the court shall thereupon enter an order directing the sale of the said title and claim as in section 7 of this article provided, and the amount realized upon said sale shall be used in the payment of costs and commissions hereunder ; and the remainder, if any, shall be paid to the State and county as

provided in this article, and the counter claim shall be dismissed. If the sale does not produce enough to pay the costs, an action may thereupon be maintained upon said bond for the costs, and reasonable attorney's fee for the Commonwealth and county attorney, to be fixed by the court.

If at any time during the pendency of said action it shall be made to appear that the bond theretofore tendered and approved by the court or the clerk is insufficient, additional security shall be required, and the failure to execute same upon being so required shall have the same effect as if no bond had been given originally, and the counter claim shall be dismissed.

Appeal may be prosecuted to the court of appeals from the judgment of the circuit court under this section within the time and in the manner and subject to all the conditions provided for appeals in section 3 of this article, except that the judgment of the circuit court as to the amount thereof shall be final and not subject to appeal.

All amounts paid to the sheriff under this section shall be by him received and paid out to the persons entitled to same as costs, and the remainder to the Auditor of the State and to the county in proportion to the amount due them for taxes and penalties for the said fifty years, in the same manner and subject to the same responsibilities of himself and his bondsmen as in the case of taxes collected by him. Provided, that fees required by law to be paid to the Auditor shall be paid to him by the sheriff, and by the Auditor paid to the person entitled thereto. It shall be the duty of the county attorney to assist the Commonwealth's attorney in all proceedings under this article for which he shall be allowed the per centum as herein provided. Certified copies of the judgments of the circuit court, under sections 3 and 4 hereof, shall be recorded in the deed books of the county where the

Failure for 5 years to list—effect of.

§ 10. When, for any five successive years after the first day of August, 1906, any owner or claimant of or to any land in this Commonwealth shall fail to list same for taxation and cause himself to be charged with the taxes properly chargeable thereon, or fail to pay the same as provided by law, then such failure shall be cause for the forfeiture of his title and claim thereto, and the transfer of the same to, and vesting it in, the Commonwealth of Kentucky. And whenever such failure exists, it shall be the duty of the Commonwealth's attorney to institute an equitable action in the circuit court of the county wherein the said land, or a part thereof, lies, for the purpose of declaring said forfeiture and vesting said title and claim thereto in the Commonwealth of Kentucky, and for the sale of such parts thereof as, under the provisions of this article, are liable to sale. Such actions and proceedings pertaining thereto shall conform to the provisions of this article as far as the same may be applicable.

Office Supreme Court, U. S.
FILED.
OCT 10 1910
JAMES H. McKENNEY,
Clerk

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1910.

No. 22.

THE KENTUCKY UNION COMPANY, - - *Plaintiff in Error,*

versus

THE COMMONWEALTH OF KENTUCKY, - *Defendant in Error.*

In Error to the Court of Appeals of Kentucky.

Brief for Commonwealth of Kentucky.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1910.

No. 22.

THE KENTUCKY UNION COMPANY, - *Plaintiff in Error.*

vs. BRIEF FOR DEFENDANT IN ERROR.

THE COMMONWEALTH OF KENTUCKY, - - - - - - - *Defendant in Error.*

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF KENTUCKY.

May it please the Court:

The plaintiff in error presents this writ of error from a decision of the Court of Appeals of Kentucky, holding that an act of the General Assembly of Kentucky, approved March 15, 1906, providing for the forfeiture and sale of lands omitted from assessment and taxation, constitutional, the act in question being Article 3 of Chapter 22 of the Acts of the General Assembly of 1906, and found at pages 115 to 126, inclusive, of said printed Acts.

This Article 3 of Chapter 22 contains ten sections, and will be found printed in full in the appendix of this brief.

As argued by counsel for plaintiff in error in the Court of Appeals of Kentucky, both orally and by printed briefs, it is insisted by plaintiff in error that the said Kentucky Statute violates the Federal Constitution in the following ways:

1. That said Article 3 of the revenue law in question is *ex post facto* in violation of the Constitution of the United States.

2. That said statute violates Section 1 of the Fourteenth Amendment of the Constitution of the United States, in that it provides for the divestiture of title from an owner without due process of law.

3. That said Article 3 of the statute violates Section 1 of the Fourteenth Amendment of the Constitution of the United States, in that the State of Kentucky in enforcing it would be denying to some persons within its jurisdiction the equal protection of the law.

4. That Article 3 of said revenue law is a law impairing the obligation of a contract, in violation of Clause 1 of Section 10 of Article 1 of the Constitution of the United States, the contract referred to being the compact between the States of Virginia and Kentucky.

We hope to convince this court by the authorities which we shall produce in this brief that these contentions of the plaintiff in error are not well taken, and that the Kentucky Statute in question is valid at all points.

In discussing this revenue law of 1906, we feel that it would be well to inquire into the history of the bill and

learn why and by whom it was drafted and the reasons for its becoming a law.

During the session of the Kentucky Assembly held in the year 1904, the Senate, by a resolution, appointed a committee of five of its members, whose duty it shall be to "consider the extent and character of the taxable wealth of the State, and the relative share of the burden of taxation borne by each class or kind of property; also the relative merits or equity of ad valorem, license and franchise taxes and the extent each may be increased or diminished without impairing the progress and developments of the State, or discriminating in the burdens of taxation.

"It shall further be the duty of such commissioners to consider methods of assessing and collecting revenues of the State, and with this in view they are directed to compare the system in use in other States, and contain such other information as they may find, and recommend in their report what they deem the best system in order to secure economy and equity in assessment and economy and afficiency in the collection of the revenues."

This committee as appointed by the President of the Senate was composed of the following: J. W. Cammack, W. W. Booles, William H. Cox, G. W. Hickman and Laban Phelps.

This committee labored assiduously upon the Revenue Bill of 1906 for nearly two whole years, and on January 3, 1906, presented in writing to the Senate their report, accompanied by a draft of the proposed revenue law.

This bill was thereupon, during the early part of the session of 1906, introduced in both the House and the Senate, it being styled "House Bill No. 1."

This bill was exhaustively considered both by the House and the Senate and by a conference committee from the two Houses during nearly the entire session of 1906, and was finally passed on March 13, 1906. (See House Journal, pp. 1689-1690, and Senate Journal, pp. 1596 to 1599.)

In the Senate it was passed by a vote of 30 to 5, and in the House by a vote of 53 to 35.

Going back now to the report of this special commission, which was presented to the Senate on January 3, 1906, and which is found in full at pages 141 to 161, inclusive, of the Senate Journal of 1906, we desire to call especial attention to the general outline of same, and to that portion thereof which bears especially upon Article 3 of the Act.

Beginning on page 144 of the Senate Journal, said report says:

> "Taxation in some form is of the substance of all government, and its necessity burden in our Commonwealth is more than compensated by the resultant security and blessing received. The thoughtful and appreciative citizen, realizing that each government must have adequate means for its perpetuity and enforcement and that taxation is the source of that means, asks only that such taxation be necessary in extent and imposed in equity and wisdom.
>
> "How to levy and collect our taxes in justice and equality, preserving the best interest of the State as a whole, and at the same time provide the necessary

revenue for government, is the problem that confronted us when we came to consider of the recommendations we should make in this report to you and the General Assembly. In order that we might as intelligently as possible investigate the subjects to be presented, *we secured from every State in the Union its tax laws, and have endeavored, as far as may be to profit by the provisions and application of those laws.* The commission thought it wise, in addition to the aid just mentioned, to hold public sessions in as many different sections of the State as possible, and to invite everybody who might have suggestions to appear before it and be heard. Pursuant to this policy, the commission has held many of said meetings, and derived much knowledge and assistance from them.

"It has been one of the most gratifying and encouraging incidents to our arduous and often seemingly impossible task that many of our able and patriotic citizens, from all stations and pursuits of life, have given freely of their time and brought to help us in our work. These meetings, beginning in Louisville, were held in cities and towns in the portions of the State differing, as far as may be, in resources, occupations, and taxable interest, to-wit, Louisville, Owensboro, Owenton, Ashland, Winchester, Frankfort, Shelbyville and Lexington. The city furtherest west visited by the commission was Owensboro, and a meeting of several days' duration was held in Ashland. Many able citizens, conversant with the intricacies of our revenue law and exponents of the development and progress of Kentucky, submitted both oral addresses and carefully-prepared papers in elucidation of their views on the subject we have considered, and while in many instances we are prevented from recommending their suggestions in the bill we shall offer, we are indebted to them for helpful information, and have, as

we trust, reflected their spirit of fairness, alike to government and taxpayer, in said bill.

"*We are free to admit, that from several points of view, not unreasonable themselves, advantageous changes could be made in our revenue laws were it not for the restrictive character of our State Constitution, and which can not be made otherwise.*

* * * * * * *

"As the present Constitution is yet but of recent creation, we have recourse to its recorded proceedings to learn of its debates and deliberations the reason for the constitutional provisions already cited. We reflected that now, as it was during the constitutional convention, the sense of a large majority of our people certainly is that the uniform taxation of all taxable property in the State is 'just to all because unjust to none,' and that if approximately all taxable property may be discovered for taxation the distributed burden thereof will not bear with heavy hand upon any citizen or material interest in the Commonwealth.

* * * * * * *

"This commission has directed much of its attention to the question of the assessment and collection of taxes, and is constrained to believe with the majority of our people that if something like full assessment of taxation could be had there would be but little if any just grounds for complaint of burdensome taxation. It has been reasonably said, and truly we fear, that 'with the development of society, the accumulations of wealth, and increase of population, the tendency is toward the evasion of the taxing laws of the State. This is true of every State in the American Union. Several of the States have appointed tax commissions to investigate the subject of taxation and the revenue laws of their State, and as far as we have had opportunity of examining them, the reports of each and every one of them dis-

cuss the question of evasion of taxation and the under-valuation of property for assessment.'

"In our own State complaint is rightly made that the owner of property too often conceals his possession from the assessor, and that the assessing officer, by indifference or connivance, too often aids in the under-valuation or non-assessment of property subject to taxation. As the result of inquiry studiously made at all of our said meetings, we reliably found that less than thirty-five per centum of the personal property of the State is assessed for taxation. We found, but in less degree, that property other than personalty was inadequately or indifferently assessed, and that one of the imperative needs of our revenue law is a more exacting method of assessment.

"We have thought it appropriate that these general observations be made. The remaining part of this report will discuss more particularly the details of the present law and of the amendments we propose; while the bill we shall offer was not decided upon without difference of opinion upon any point, the report and the bill to be submitted therewith are approved by each member of this commission. Some difficulties were encountered in harmonizing constitutional limitations with what we believe to be much-needed legislation in reaching property for taxation that does not now bear its proportionate share, but we believe the amendments providing for such taxation as substituted in our bill conform to the Constitution and the decisions of our Court of Appeals on taxation.

* * * * * * *

"Kentucky possesses the greatest natural resources of any of the Central States. The central and western part of the State is largely adapted to agricultural purposes. The eastern part of the State abounds in forests and mineral wealth.

"Before Kentucky was made a State, and for many years after it was admitted into the Union, many land grants were made covering most all of the land known as the mountainous section. Many of these grants were made by Virginia while Kentucky was yet a portion of Virginia. They are conflicting and in many instances there are four or five covering the same land.

"On account of that portion of the State being covered with these land grants development of all kinds had been delayed, titles to real estate are uncertain and capital is kept away. These same conditions existed in the mountainous parts of Virginia and West Virginia, but the legislatures in those States, by passing revenue measures providing a forfeiture of all lands to the State where no owner or claimant could be found to pay the tax on it, cleared up most of the land titles and made the way clear for capital to be safely invested in them.

"We recommend to the careful, and we hope favorable consideration of the General Assembly an amendment to the present assessment laws that will be a great revenue producer, and, at the same time, will do more to rid the eastern part of the State of these old land grants, than any other measure. This amendment will not affect the titles to the central and western portions of the State because old land grants in these sections do not affect or destroy the present titles to the land, but it will cause the owners of real estate in all sections of the State to assess it and pay taxes on it, and for that reason the amendment will be a large revenue producer."

The case at bar is a suit brought on April 20, 1907, by the defendant in error against the plaintiff in error in the circuit court for Leslie County, seeking to forfeit and sell the title to a 40,000-acre grant of land surveyed by one Stephen G. Reid in January, 1872, and patented

by the Commonwealth of Kentucky to said Reid in June, 1872, because of the failure of the plaintiff in error to assess for taxation or pay taxes on said land for all five of the years from 1901 to 1905, inclusive, and for the further failure on the part of plaintiff in error to offer to list or assess the said lands for taxation on or before the first of January, 1907, or to pay said omitted taxes by March 1, 1907, as required by Sections 1 and 2 of said Article 3 of Chapter 22. (See the petition in equity and exhibit filed therewith at pages 1 to 4 of the record.)

The plaintiff in error is a Kentucky corporation and was duly summoned to answer this petition on April 26, 1907, by service of process on Arthur Cary, its president.

The only defense made by the plaintiff in error in the trial court was to file a demurrer to the petition as amended. (Said demurrer is found at page 6 of the record.)

It is alleged in the petition and admitted as true by the general demurrer that at the time of the filing of this suit on April 20, 1907, the plaintiff in error was the legal owner and had been such legal owner of all of the 40,000-acre grant of land sought to be forfeited for more than seven years last past, and that said plaintiff in error as the owner and claimant of said title had failed to list said land or any of it for assessment or taxation for all of said seven preceding years, and had, during said period, utterly failed to pay the taxes which should have been assessed against it as such owner and claimant, and further that neither the plaintiff in error as such owner and claimant, nor any one for it, did on or before March

1, 1907, cause said land, or any of it, to be assessed for taxation or pay the taxes or any part thereof, which should have been assessed and charged against the defendant as such owner and claimant of said land for either or any of the five years from Septemebr, 1901, to September, 1905, inclusive.

From the foregoing facts it is clearly deduced that the plaintiff in error was the owner of this land and title from some time during the year 1900, during all of the time and until after the filing of this suit.

This case was tried in the State Circuit Court on the 18th day of October, 1907. (See record of trial and judgment, pages 8 to 10 of the record.) The result of this trial was a judgment of forfeiture, forfeiting and transferring to the Commonwealth of Kentucky all of the right, title, interest and claim of the plaintiff in error, the Kentucky Union Company, in and to the said 40,000-acre tract of land; and the trial court also ordered a sale of said land to be made at a future time and subsequent to the next following term of the court.

Upon appeal by the plaintiff in error to the Kentucky Court of Appeals, the judgment of forfeiture was affirmed, but that part of the judgment ordering a sale of the land was reversed and the cause remanded to the trial court for proceedings in conformity with the opinion of the Court of Appeals.

This writ of error is prosecuted from this judgment of the Court of Appeals affirming the judgment of forfeiture rendered by the Leslie Circuit Court.

ARGUMENT.

By Sections 1 and 2 of Article 3 of Chapter 22 of the Acts of 1906, it was made the duty of the owner and claimant of all lands to go into the county court in the county where the lands lie, on or before January 1, 1907, and file in said court a statement and application to the court to list and assess for taxation all of his lands for the assessment years beginning September 15, 1901, September 15, 1902, September 15, 1903, September 1, 1904, and September 1, 1905 (or for such of said years which said lands had been omitted from assessment and taxation) and thereafter, and on or before March 1, 1907, pay said omitted taxes, together with certain interest and penalties.

By the decision of the Court of Appeals in this case, pages 30 and 31 of the record, the court holds that the interest and penalties may be eliminated and only the amount of unpaid taxes collected.

As thus construed by the highest court of Kentucky, this duty placed upon the owner and claimant of land is not greater nor more burdensome in any particular than the duty resting upon him during all of the time for many years just prior to the enactment of this statute in March, 1906.

By an act of November 11, 1892, same being Section 4021 of the Kentucky Statutes, it was provided that:

> "The Commonwealth, and each county, incorporated city, town or taxing district, shall have a lien on

the property assessed for the taxes due them respectively, which shall not be defeated by gift, devise, sale, alienation, or any means whatever, unless the gift, devise, sale or alienation shall have been made more than five years before the institution of proceedings to enforce the lien, and nothing shall be exempt from levy and sale for taxes and cost incident to the sale. When any lands and improvements shall not be assessed in any one year, it may be assessed retrospectively, in the manner provided for by law, for that year at any time not later than five years thereafter, but the lien thereby accruing shall not prejudice the rights of purchasers acquired in the meantime."

The foregoing section of the statute has been in force in this State every day of the time since its enactment in the year 1892, and it is still a part of the statute law of the State, so that in view of this statutory provision, and in view of the opinion of the Court of Appeals in the case at bar, Article 3 of Chapter 22 of the Act of 1906 places upon the plaintiff in error no greater burden in the way of taxes assessed and paid upon the land in question.

We go a step further and maintain that to the extent of penalties prescribed for the non-payment of taxes the statutes in force during the years just preceding the year 1906 were even harsher than Article 3 of Chapter 22 of the Act of 1906, as construed by the Court of Appeals.

Section 4260 of the Kentucky Statutes, enacted in the year 1902, and in force at all times since, and being the same in substance as the statute law passed in the year 1892, is as follows:

"It shall be the duty of the revenue agent to cause to be listed for taxation, in the manner required by law, all property in the county for which he may have been appointed which may have been omitted to be assessed by the assessor, Board of Valuation and Assessment or Railroad Commission. * * *

"And he (the revenue agent) shall be entitled to receive a commission of twenty per cent penalty on the amount of taxes recovered, to be paid by the delinquent taxpayer, which penalty shall be entered as a part of the judgment against the delinquent."

We therefore conclude that one of the chief things in the minds of the Legislature in enacting this Article 3 of Chapter 22 of the Acts of 1906 was to compel the owner of lands which had been omitted from assessment and taxation to come into the county court and make a disclosure and list his lands for taxation, and pay the delinquent taxes on the same for the period of five years, rather than compel the auditor's agent to hunt up these delinquent taxpayers and these omitted lands and compel the listing and assessment of same. And this was not an unreasonable requirement of the property owner because he, of all persons in the world, knew best what property it was his duty to list for taxation and pay the taxes thereon.

At the outset we maintain that the Legislature has practically unlimited power and authority to levy and collect all taxes; and unlimited power and authority to forfeit, seize upon and sell the property of the citizen for non-assessment or non-payment of taxes, the only restrictions upon this power of the Legislature being that the taxing laws shall be as uniform as the nature of the

case will admit of, that the taxes shall be levied and collected for public purposes and that in cases of forfeiture and sale of property for non-assessment or non-payment of taxes that the person whose property is thus forfeited and sold shall have his day in court, an opportunity to be heard upon the issues arising in said forfeiture proceedings.

THE POWER OF TAXATION is defined and explained in Cooley's Constitutional Limitations, 6th Edition, Chapter 14, beginning at page 587, in the following words:

> "The power to impose taxes is one so unlimited in force and so searching in extent that the courts scarcely venture to declare that it is subject to any restrictions whatever, except such as rest in the discretion of the authority which exercises it. It reaches to every trade or occupation; to every object of industry, use or enjoyment; to every species of possession; and it imposes a burden which, in case of failure to discharge it, may be followed by seizure and sale or confiscation of property. No attribute of sovereignty is more pervading, and at no point does the power of the government affect more constantly and intimately all the relations of life than through the exactions made under it.
>
> "Taxes are defined to be burdens or charges imposed by the legislative power upon persons or property, to raise money for public purposes. The power to tax rests upon necessity, and is inherent in every sovereignty. The Legislature of every free State will possess it under the general grant of legislative power, whether particularly specified in the constitution among the powers to be exercised by it or not. No constitutional government can exist without it, and no arbitrary government without regular and

steady taxation could be anything but an oppressive and vexatious despotism, since the only alternative to taxation would be a forced extortion for the needs of government from such persons or objects as the men in power might select as victims. Chief Justice Marshall has said of this power:

" 'The power of taxing the people and their property is essential to the very existence of government, and may be legitimately exercised on the object to which it is applicable to the utmost extent to which the government may choose to carry it. The only security against the abuse of this power is found in the structure of the government itself. In imposing a tax, the Legislature acts upon its constituents. This is, in general, a sufficient security against erroneous and oppressive taxation. The people of a State, therefore, give to their government a right of taxing themselves and their property; and as the exigencies of the government can not be limited, they prescribe no limits to the exercise of this right, resting confidently on the interest of the legislator, and on the influence of the constituents over their representative to guard them against its abuse.'

"The same eminent judge has said, in another case:

" 'The power of legislation, and consequently of taxation, operates on all persons and property belonging to the body politic. This is an original principle which has its foundation in society itself. It is granted by all for the benefit of all. It resides in the government as part of itself, and need not be reserved where property of any description or the right to use it in any manner, is granted to individuals or corporate bodies. However absolute the right of an individual may be, it is still in the nature of that right that it must bear a portion of the public burdens and that portion must be determined by the Legislature. This vital power may be abused; but the interest, wisdom, and justice of the representa-

tive body, and its relations with its constitutents furnish the only security where there is no express contract against unjust and excessive taxation, as well as against unwise legislation generally.'

"And again the same judge says:

" 'It is unfit for the judicial department to inquire what degree of taxation is the legitimate use, and what degree may amount to the abuse of the power.' "

The above is quoted from the great case of McCulloch v. Maryland, 4 Wheaton, 316, 428, 430.

See also, in support of the same general doctrine, the following cases:

Providence Bank v. Billings, 4 Peters, 514, 561.
Kirtland v. Hotchkiss, 100 U. S. 491.
Board of Education v. McLandsborough, 36 Ohio St. 227.
State v. Board of Education, 38 Ohio St. 3.
Kirby v. Shaw, 19 Pa. St. 258.
Sharpless v. Mayor, etc., 21 Pa. St. 147.
Weister v. Hade, 52 Pa. St. 474.
Wingate v. Sluder, 6 Jones (N. C.), 552.
Herrick v. Randolph, 13 Vermont, 525.
Armington v. Barnet, 15 Vermont, 745.
Thomas v. Leland, 24 Wendell, 65.
People v. Mayor of Brooklyn, 4 N. Y. 419.
Portland Bank v. Apthorp, 12 Mass. 252.
Western Union Tel. Co. v. Mayer, 28 Ohio St. 521.

In Cooley's Constitutional Limitations (6th Ed.), Chapter 11, title, "Of the Protection to Property by the Law of the Land," the learned judge, under the subhead of "Limitation Laws," beginning on page 447, says:

"Notwithstanding the protection which the law gives to vested rights, it is possible for a party to debar himself of the right to assert the same in the courts, by his own negligence or laches. If one who is dispossessed be negligent for a long and unreasonable time, the law refuses afterwards to lend him any assistance to recover the possession merely, both to punish his neglect and also because it is presumed that the supposed wrongdoer has in such a length of time procured a legal title, otherwise he would sooner have been sued. Statutes of limitation are passed which fix upon a reasonable time within which a party is permitted to bring suit for the recovery of his rights, and which, on failure to do so, establish a legal presumption against him that he has no rights in the premises. Such a statute is a statute of repose. Every government is under obligation to its citizens to afford them all needful legal remedies; but it is not bound to keep its courts open indefinitely for one who neglects or refuses to apply for redress until it may fairly be presumed that the means by which the other party might disprove his claim are lost in the lapse of time.

"When the period prescribed by statute has once run, so as to cut off the remedy which one might have had for the recovery of property in the possession of another, the title to the property, irrespective of the original right, is regarded in the law as vested in the possessor, who is entitled to the same protection in respect to it which the owner is entitled to in other cases. A subsequent repeal of the limitation law could not be given a retroactive effect so as to disturb this title. It is vested as completely and perfectly, and is as safe from legislative interference as it would have been had it been perfected in the owner or by any species of assurance.

* * * * * * *

"All statutes of limitation also must proceed on the idea that the party has full opportunity afforded

him to try his right in the courts. A statute could not bar the existing right of claimants without affording this opportunity; if it should attempt to do so, it would be not a statute of limitations, but an unlawful attempt to extinguish rights arbitrarily, whatever might be the purport of its provisions. It is essential that such statutes allow a reasonable time after they take effect for the commencement of suits upon existing causes of action, though what shall be considered a reasonable time must be settled by the judgment of the Legislature and the courts will not inquire into the wisdom of its decision in establishing the period of legal bar, unless the time allowed is manifestly so insufficient that the statute becomes a denial of justice."

The revenue law which we have under discussion was passed by both houses of the Legislature on March 13, 1906, and was signed by the Governor and became a law on March 15, 1906.

Article 3 of said law provides that it shall be the duty of each and every owner or claimant of land to pay all the taxes which have been assessed and which should have been assessed against him, and those under whom he claims as the owner or claimant of said lands as of the 15th day of September, 1901, the 15th day of September, 1902, the 15th day of September, 1903, the 1st day of September, 1904, and the 1st day of September, 1905. Said Article 3 further provides that if any such owner or claimant or those under whom he claims, has failed to list such land for assessment and taxation, as of any three of said dates, or has failed to pay the taxes charged, or which should have been charged against him, or those under whom he claims, as the owner or claimant thereof

upon said dates, for any three of the years, for which said assessment were, or should have been made, said owner and claimant and those under whom he claims are hereby declared to be delinquent; and such failures, or either of them, shall be cause for the forfeiture and transfer to the Commonwealth of his said claim and title thereto, in a proceeding to be instituted for that purpose as hereinafter provided. But said cause for forfeiture shall be extinguished if said owner or claimant, his heirs, representatives or assigns, shall, within the time and in the manner in this article provided, cause said land to be assessed for taxation, and, on or before March 1, 1907, pay the taxes charged, and which should have been charged against him, or against those under whom he claims, as the owner or claimant thereof, for each and all of said five years, for which he or those under whom he claims are delinquent, together with the interest and penalties provided by law in case of the redemption of land sold for the non-payment of taxes.

Section 2 of said Article 3 provides that the ascertainment of the amount of taxes unpaid and assessment required by the preceding section shall be made by the county court of the county wherein the land lies, upon the application of said owner or claimant, by a petition verified by himself or his agent, filed in said court on or before January 1, 1907, in which the land sought to be charged shall be described, so as to be identified, and the years for which it was not listed and the years in which the taxes were not paid shall be stated, and in which also shall be stated the grant under which he claims, if

he derives title from a grant, and the instrument through or the manner in which the title devolved upon him.

Said second section further provides for a hearing in the county court of said application and the rendition of a judgment in said court fixing the assessment and amount of taxes to be paid upon the land in question, with the right of an appeal either to the owner and claimant of the land or to the Commonwealth, which appeal runs to the circuit court of the county.

From an examination of the foregoing, and of the statute in question it will be observed that in order for an owner or claimant of land to become delinquent and be subject to the forfeiture provided for by the statute that such owner or claimant must have failed for some three of the five years beginning September 15, 1901, and ending September 1, 1905 (both inclusive), to have assessed for taxation and paid the taxes on the lands claimed by him, or some part of same, and in addition thereto such owner or claimant must have failed to, on or before January 1st, 1907, file in the county court his petition and application to have said land assessed for taxation, and he must have failed, on or before March 1, 1907, to have paid the taxes which had thus been assessed under said application against said land.

From the foregoing it will be observed that before the forfeiture provided for by the statute can be invoked that the owner and claimant of the land must have been delinquent in the payment of his taxes for as much as three years, and these three years may have been any three certain years out of five given years.

In addition thereto the owner and claimant of lands had nine and one-half months from the time the Act in question became a law within which to file in the county court his petition and application for an assessment of the lands theretofore omitted from assessment and taxation, and in adition thereto said owner and claimant had two months longer within which to pay the taxes thus assessed against him before the forfeiture became absolute; we feel amply able to demonstrate to the court both by reason and authority that these periods of limitation thus fixed by the Legislature in the Revenue Law under discussion are not only reasonably long but amply so for the purposes for which they were intended.

In support of the foregoing we quote from Cooley on Taxation (1st Ed.), at page 376, as follows:

> "The statute limiting a short time within which the owner of the original title shall contest the tax claim, are supposed to be enacted in pursuance of a sovereign authority in the Legislature to fix a reasonable time within which such a party shall be allowed to assert his rights by suit, or be debarred. The policy of such laws is unquestionable, and the power to enact them is undisputed.
>
> "The most common limitation of actions for the recovery of land is twenty years after the right of action accrued. But whenever the legislative wisdom shall determine that a shorter limitation for all cases or for any class of cases would be wise, it is unquestionably competent to prescribe it. Advantage has been taken of this power in some instances, by parties interested in tax titles, and laws have been secured which, in tax cases, limit the time to five years, or to three years. But in some of these laws another peculiarity will be found besides the short

period that is prescribed for contesting the tax claim. They do not on their face purport to be statutes which limit the time in which a party may bring suit against one in possession, claiming by tax title, but they fix a time after which the tax title shall not be questioned. The short period of limitation it is entirely competent for the Legislature to prescribe, but it may be questioned whether an Act which merely limits a time within which a bad title may ripen into a good one is, either in spirit, purpose or effect, an Act in the nature of an act of limitations."

To the same effect is the language found in Black on Tax Titles, (2nd Ed.), Chapter 32, Sections 492 to 501, inclusive.

Section 492. "In most, if not all, of the American States there are upon the statute books laws which limit the right of the former owner of land sold for taxes to bring his action to test the validity of the tax title, to a much shorter period than that prescribed by the common law for the trial of titles to land. The policy and design of these short statutes of limitation are to be sought primarily in the desirability of having all such actions litigated while the facts are still comparatively recent and the proofs fresh, and secondarily in the anxiety of the law to strengthen the class of titles which depend upon tax sales, and to encourage purchasers at such sales, by making their claims impregnable, or much more difficult of overthrow when backed by a possession of several years. * * * The manner in which the courts have interpreted the statutes, so as to recognize and allow for the objections here hinted at, will sufficiently appear in the following sections. But within the proper and constitutional bounds, it is entirely competent for the Legislature to prescribe a short period—*e. g.*, three, five, or seven

years, within which the courts may take cognizance of actions brought to overturn tax titles."

Section 500. "It is well settled, as a principle of constitutional law, that a statute of limitations may legitimately be made operative upon rights or causes of action already accrued at the date of its passage, so as to require suit to be brought within a less period of time than was by law allowed for such purpose at the time when the cause of action accrued, or so as to prescribe a new period of limitation where none before existed, provided, in either case, that the period be not so unreasonably shortened as practically to deprive parties of a remedy altogether. And in accordance with this rule it is held that a statute limiting the time for bringing actions invalidate tax titles may properly be made retrospective and it will operate on tax sales made prior to its passage, at least from the date of the law."

The position we have taken in this brief regarding this question of short statutes of limitation is upheld in all points by the decisions of the Supreme Court of the United States in the cases of Terry v. Anderson, 95 U. S. 628.

In that case appellee Anderson, who was the defendant in the trial court, was a stockholder in and the assignee of the Planter's Bank of Georgia, which bank in February, 1865, became unable to pay its outstanding bank notes. In July, 1866, the bank made a deed of assignment for the benefit of creditors to appellee Anderson and one Mercer. The appellant Terry, who was plaintiff in the trial court, was the holder of more than $5,000.00 of the bills of said bank, and on December 24, 1869, he presented same to the assignee Anderson for

payment; only 38⅛ per cent. of the bank's outstanding bills were ever paid off, and the assignees of the bank were on June 30, 1873, fully discharged from their trust.

Afterward, on April 6, 1874, the appellant and others filed a bill in equity against appellee Anderson and others seeking to recover from them as assignees, and as stockholders of said bank, a sum of money sufficient to pay off and discharge the remaining outstanding bills of the bank.

In the meantime and on March 16, 1869, the Legislature of the State of Georgia passed an Act greatly shortening its then existing statutes of limitations; said Act was approved on March 16, 1869, and the portions of it pertinent to said case are as follows:

> Section 3. "And be it further enacted, that all actions on bonds or other instruments under seal, and all suits for the enforcement of rights accruing to individuals or corporations, under the statute or acts of incorporation, or in any way by the operation of law which accrued prior to the first day of June, 1865, not now barred, shall be brought by the 1st of January, 1870, or the right of the party, plaintiff or claimant, and all right of action for its enforcement shall be forever barred.
>
> Section 4. "And be it further enacted, that all actions on promissory notes, bills of exchange, or other simple contracts in writing, and all actions on open accounts, or for the breach of any contract not under the hand of the party sought to be charged, or upon any implied assumsit or undertaking, which accrued on a contract which was made prior to June 1, 1865, not now barred, shall be brought by the 1st of January next, after the passage of this act, or the right of the party, plaintiff or claimant, and all

right of action for its enforcement shall be forever barred.

Section 6. "And be it further enacted, that all other actions upon contracts, express or implied, or upon any debt or liability whatever, due the public, a corporation or a private individual or individuals, which accrued prior to the 1st of June, 1865, and are not now barred, shall be brought by the 1st of January, 1870, or both the right and the right of action to enforce it shall be forever barred. All limitations hereinbefore expressed shall apply as well to the courts of equity as courts of law, and the limitation shall take effect in all cases mentioned in this act, whether the right of action had actually accrued prior to the 1st of June, 1865, or was then only inchoate and imperfect, if the contract or liability was then in existence."

Prior to the enactment of the above quoted statute of limitations, the statute in such cases made and provided was the term of 20 years.

In the trial court (the Circuit Court of the United States for the Southern District of Georgia), the defendants Anderson and others filed their demurrers to the bill, which demurrers interposed as a defense the said statute of limitations enacted by the Legislature of Georgia on March 16, 1869; (the practice in the United States Courts permitting the statute of limitations to be interposed by a demurrer as well as by plea or answer).

The trial court upheld the plea of the statute of limitations, sustained the demurrers and dismissed the bill absolutely; on apeal to the United States Supreme Court, the judgment of the trial court was affirmed on all points, the court in its opinion written by Mr. Chief Justice

Waite, and concurred in by every member of the court, said, on page 632:

> "In Terry v. Tubman, 92 U. S. 156, we decided that where the charter of a bank contained a provision binding the individual property of its stockholders for the ultimate redemption of its bills in proportion to the number of shares held by them respectively, the liability of the stockholder arose when the bank refused or ceased to redeem, and was notoriously insolvent; and that when such insolvency occurred prior to June 1, 1865, an action against a stockholder not commenced by January 1, 1870, was barred by the Statute of Limitations of Georgia of March 16, 1869. That act, as recited in its preamble, was passed on account of the confusion that had 'grown out of the distracted condition of affairs during the late war,' and substantially barred suits upon all actions which accrued before the close of the war, if not commenced by the first day of January, 1870.
>
> "This is a suit to enforce the liability of the stockholder of a bank, under a provision of the charter similar to that considered in Terry v. Tubman; and it is expressly averred in the bill that the bank stopped payment on the 20th of February, 1865, and never resumed. The affairs of the bank were closed up under an assignment made July 9, 1866, the proceeds of which paid only a small percentage upon its liabilities. The case is thus brought directly within our former ruling; but it is insisted that the Act of 1896 is unconstitutional, because it impairs the obligations under which the complainants claim, and, as that question was not directly passed upon in the other case, we are asked to consider it now. The argument is, that as the statute of limitations in force when the liability of the defendants was incurred did not bar an action until the expiration of twenty years from the time the action accrued, a

statute passed subsequently reducing the limitation impaired the contract, and was consequently void.

"This court has often decided that statutes of limitation affecting existing rights are not unconstitutional, if a reasonable time is given for the commencement of an action before the bar takes effect. Hawkins v. Barney, 5 Pet. 451; Jackson v. Lamphire, 3 *Id.* 280; Sohn v. Watterson, 17 Wall, 596; Christmas v. Russell, 5 *Id.* 290; Sturgis v. Corwinshield, 4 Wheat. 122.

"It is difficult to see why, if the Legislature may prescribe a limitation where none existed before, it may not change one which has already been established. The parties to a contract have no more a vested interest in a particular limitation which has been fixed, than they have in an unrestricted right to sue. They have no more a vested interest in the time for the commencement of an action than they have in the form of the action to be commenced; and as to the forms of action or modes of remedy, it is well settled that the Legislature may change them at its discretion, provided adequate means of enforcing the rights remain.

"In all such cases the question is one of seasonableness, and we have, therefore, only to consider whether the time allowed in this statute is, under all the circumstances, reasonable. Of that the Legislature is primarily the judge; and we can not overrule the decision of that department of government, unless a palpable error has been committed. In judging of that, we must place ourselves in the position of the legislators, and must measure the time of limitation in the midst of circumstances which surrounded them, as nearly as possible; for what is reasonable in a particular case depends upon its particular facts."

Here, nine months and seventeen days were given to sue upon a cause of action which had already been run-

ning nearly four years or more. The third section of the statute is as follows:

(The third section of the statute, *supra,* is here quoted in full.)

> "The liability to be enforced in this case is that of a stockholder, under an act of incorporation, for the ultimate redemption of the bills of a bank swept away by the disasters of a civil war which had involved nearly all of the people of the State in heavy pecuniary misfortunes. Already the holders of such bills had had nearly four years within which to enforce their rights. Ever since the close of the war the bills had ceased to pass from hand to hand as money, and had become subject of bargain and sale as merchandise. Both the original billholders and the stockholders had suffered from the same cause. The business interests of the entire people of the State had been overwhelmed by a calamity common to all. Society demanded that extraordinary efforts be made to get rid of old embarrassments, and permit a reorganization upon the basis of the new order of things. This clearly presented a case for legislative intereference within the just influence of constitutional limitations. For this purpose the obligations of old contracts could not be impaired, but their prompt enforcement could be insisted upon or an abandonment claimed. That, as we think, has been done here, and no more. At any rate, there has not been such an abuse of legislative power as to justify judicial interference. As was said in Jackson v. Lamphire, *supra*: 'The time and manner of their operation (Statutes of Limitation) the exceptions to them, and the act from which the time limited shall begin to run, will generally depend upon the sound discretion of the Legislature, according to the nature of the titles, the situation of the country, and the emergency which leads to their enactment.

"The Supreme Court of Georgia, in Georgia v. Gardner, 49 Ga. 441, held that the time prescribed in this act was not so short or unreasonable under the circumstances as to make it unconstitutional; and the Circuit Court of the United States for the Southern District of Georgia held to the same effect in Samples v. The Bank, 1 Woods, 523. We are satisfied with these conclusions. The circumstances under which the statute was passed seem to justify the action of the Legislature. The time, though short, was sufficient to enable creditors to elect whether to enforce their claims or to abandon them.

"This disposes of the questions arising upon the individual liabilities of the stockholders under the charter. It still remains to consider the cases of the stockholders whose subscriptions were not paid in full at the time of the failure of the bank. For this purpose, it is not necessary to decide whether this liability passed to the assignees under the assignment. If it did not, and the present complainants have the right to sue for it, their action is barred by the statute of 1869. It was a debt due the corporation June 1, 1865; and, by Section 6 of that statute, all actions upon any debt or liability due a corporation, which accrued prior to that date and was not barred when the act was passed, must be brought by January 1, 1870.

"The case of Cherry v. Lamar, decided by the Supreme Court of Georgia in January, 1877, is not, as we understand it, at all in conflict with this. There the charter of a bank made a call by the directors, and sixty-day notice of it to the stockholders, conditions precedent to the collection of unpaid stock subscriptions; and it was consequently held that the statute did not commence to run against such a liability until the requisite call had been made and notice given. Neither in this case nor in Terry v. Tubman does any such provision of the charter appear. For all that is shown in the record, the stockholders

were liable to suit at any time for the recovery of the balance due from them.

"These complainants are neither of them judgment creditors of the bank. In a suit instituted by the assignee to close up the assignment, they proved their claims and the amount due them was found for the purpose of a dividend. The finding was sufficient for the purpose of distribution; but it has none of the characteristics of a judgment or decree, to be enforced as against anything but the fund which the court was then administering.

"We see nothing to take this case out of the operation of the decision in Terry v. Tubman, and the decree of the Circuit Court is therefore *affirmed.*"

Subsequently a petition for rehearing was filed by the appellant, which after consideration by the court was overruled, and in the response of the court in overruling the pettion for rehearing the foregoing opinion was adhered to at all points.

The case of Terry v. Tubman, cited by the court with approval in the foregoing opinion, is found in 92 U. S. at page 156, and the bone of contention in that suit was this same statute of limitations passed by the Legislature of the State of Georgia on March 16, 1869, and in said case the statute was upheld by the court in the same manner as was done in the case of Terry v. Anderson.

We would at this point especially call this court's attention to the fact that the statute of limitations provided for by the Kentucky Legislature in the Revenue Law of 1906, gives one day more for the institution of proceedings than was given by the Legislature of Georgia in the law of March 16, 1869.

The case of Terry v. Anderson on this question of the constitutionality of short statutes of limitation is on all fours with the case at bar, and the argument of the Supreme Court of the United States in upholding the said statute of Georgia is so thoroughly in harmony with the facts and the law in the case at bar as to make the analogy complete, and thus make the reasoning adduced in that case fit the facts and the law in this case with absolute mathematical accuracy.

It will perhaps be claimed by the defendant in this suit that the Kentucky Revenue Law, approved March 15, 1906, violates the State Constitution, and the 14th Amendment to the Federal Constitution by depriving the defendant of his land without due process of law, and contrary to the law of the land. The answer to this objection, if made, is short.

The Kentucky Revenue Law of 1906 is substantially an exact copy of the revenue laws of the States of Virginia and West Virginia, both of which have been in force for many years, the revenue laws of Virginia having been enacted prior to the adoption of the 14th Amendment of the Federal Constitution; and the revenue laws of West Virginia having been enacted many years subsequent to the adoption of the 14th Amendment.

These revenue laws of both Virginia and West Virginia have been upheld on all points by the Supreme courts of the respective States and also by the Supreme Court of the United States.

The leading case in West Virginia is that of State v. Sponaugle *et al.*, decided in 1898, and found in 45 W. Va. 415, and 32 S. E. Rep. 283.

The case in the United States Supreme Court is that of King v. Mullins *et al.*, appealed from the Circuit Court of the United States for the District of West Virginia, decided in 1898, and reported in 171 U. S. 404, and 18 Sup. Ct. Rep. 925.

In the oral argument of this case we will read to the court the two above mentioned opinions in full, and we now say that we feel absolutely sure that these two cases are authorities of such commanding influence, and the opinions therein contain such logical and sound argument as to at once and forever put at rest all questions as to the alleged unconstitutionality of the Kentuck Revenue Law of 1906.

Further in this connection we would call the court's attention to Brannon's Fourteenth Amendment, at page 260, where the learned author in discussing this question of the right of the State to forfeit lands for non-payment of taxes thereon, uses the following language:

> "Upon the same principles of proceedings *quasi in rem* may be based and vindicated the West Virginia legislation providing for the sale of land as forfeited for failure to enter it for taxation, or to pay taxes actually assessed thereon, *through* a suit in equity with publication to all persons interested, the legislation declaring that the decree condemning the land as forfeited and subject to sale shall bind all claimants. The legislation referred to will be found in Chapter 105 of the West Virginia Code of 1891, re-enacted in Acts of 1893, page 57. It was

attacked as violating the State Constitution and the 14th Amendment of the Federal Constitution in depriving land-owners of property without due process of law; but the attack upon the said legislation has been overruled, and the legislation held to be consistent with State and Federal constitutions by State and national supreme courts. In both courts emphasis was placed, as going far to validate the statute procedure, upon the fact and feature of the satute that the sale to enforce the forfeiture was by a chancery suit *inter partes,* and that notice was given of the proceeding by service of process and publication, so that the parties had opportunity to defend their rights and resist the alleged forfeiture. Justice Harlan, in delivering the opinion of the Supreme Court of the United States, laid great stress upon that feature of the case.

"There has been much question about the constitutionality under the 14th Amendment of the provisions of the West Virginia Constitution and statute forfeiting lands for failure of the owner to have them charged with taxes on the land books, it being alleged that the State Constitution and statutes *ipso facto* from such non-entry forfeited the land and vested the owner's title in the State, without any judicial ascertainment of the delinquency of its owner, and that this forfeiture was a deprivation of its property without due process of law. But this contention has been met in the cases cited by the answer that under the process adopted by the State through a chancery suit for the declaration of the forfeiture and the sale of the land, the owner has his day in court to contest the fact of forfeiture and exculpate his lands from it. So this matter has been set to rest. Both forfeiture and sale process have been held valid. Legislation in Virginia many years prior to the 14th Amendment existed in repeated acts forfeiting large areas of land for the non-payment of taxes assessed thereon, or for the failure of owners

to enter it for taxation. The proceeding for the sale of such land as forfeited was not a proceeding by suit *inter partes*, but simply an *ex parte* proceeding to sell the land, without any provision for hearing the owner, indeed it was held that he had no right to a hearing. The Virginia courts in several cases held that the Virginia Statutes *proprio vigore*, without office found or any inquisition judicial in its nature, forfeited the land and invested the State with its title, and that such statutes were constitutional. It is true that those decisions antedated the 14 th Amendment, but there was in the Virginia Constitution the provision that no one should be deprived of his property without due process of law. As stated in the cases of State v. Sponaugle, and King v. Mullins, *supra*, such forfeiting statutes had been long and frequently resorted to by the State of Virginia as a means and ordinary process for the enforcement of payment of her taxes, and under the strong powers of a State on the subject of taxation those statutes were ancient, ordinary, usual and due process for the enforcement of her rights against delinquent taxpayers, long before the coming of the 14th Amendment, and were not impugned by it."

The only portions of the Federal Constitution which it might be claimed are violated by the Kentucky Revenue Law of 1906, are Paragraph 1, of Section 10, as follows:

> "No State shall * * * pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility."

And Section 1, of the 14th Amendment, which is as follows:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens

of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The only portion of the Kentucky Constitution which it might be claimed is violated by the said Revenue Law of 1906, is Section 19 of the Constitution, which says that:

"No *ex post facto* law, nor any law impairing the obligation of contracts, shall be enacted."

We submit that this Revenue Law is not within the inhibition denounced by said constitutional provisions. We do not believe that under the rules of construction that the Revenue Law in question is even retroactive, but if retroactive, it is not for that reason alone unconstitutional.

In Thornton, etc., v. McGrath, etc., 1 Duval, 355, the courts say:

"Retrospective legislation is not, merely as such, unconstitutional; and although it may often be impolitic and unjust, the judiciary is bound by it unless it shall have an effect forbidden by the fundamental law. *Ex post facto* statutes, *applying only to crimes*, and statutes impairing the obligation of contracts, are expressly forbidden by the Constitution."

In Broaddus' Devisees v. Broaddus' Heirs, 10 Bush, 306, the court in discussing this question of retrospective statutes, uses the following language:

"The judgment was rendered in September, 1872, and the record filed in this court on the 9th day of May, 1873. The act in regard to wills embodied in

> the General Statutes, if conceded to be retrospective in its operation in the present case, does not in any manner interfere with the vested rights of any of the parties to this appeal. They are each seeking by this litigation to have those rights determined, and the modification or change by the Legislature as to the manner or form of the proceeding upon an appeal in this court affects the remedy only; and, as has been often adjudged, remedial statutes, instead of affecting vested rights, only afford the means of enforcing them." (4 Howard 145; 1 Barb. 648; 6 Seld. 374; Cooley's Constitutional Limitations, page 288.)

True it is that in the case of Marshall v. McDaniel, 12 Bush, 378, 382, 385, the Court of Appeals declared that an act of the Legislature of 1825 providing for a forfeiture of land for non-payment of taxes, *without office found,* unconstitutional, under the Bill of Rights of the Constitution of Kentucky, adopted in 1850; but the Bill of Rights *of* the Constitution of 1891 is not so favorable to the individual as was the Bill of Rights of 1850, and what is much more to the point is that the Revenue Law of 1906 *does provide* for a suit *inter partes,* after summons and due notice and an opportunity to the defendant to be heard in the court before any forfeiture is entered. In other words, the Revenue Law of 1906, by providing for an office found before forfeiture cured the omission and defect in the Act of 1825, and meets fully the requirements of the Constitution as laid down by the opinion of the court in the case of Marshall v. McDaniel, *supra.*

(See Constitution of 1850, Article 13, Section 3; and also Constitution of 1891, Section 2.)

Below we append extracts from decisions of several States upholding revenue laws similar to the Kentucky Law of 1906.

"Nothing is found in the law authorizing the forfeiture of lands to the State for non-payment of taxes after due notice, repugnant to the provisions of the State Constitution, nor in contravention of of Article 1, of the 14th Amendment to the Constitution of the United States."

Morrison v. Larkin, 26 La. Ann. 677.

"The Acts forfeiting lands to the Commonwealth for the failure to enter them on the books of the Commissioner, and to pay the taxes thereon, are constitutional."

Wild's Lessee v. Serpell, 10 Grat. (Va.) 405.

"Where a tract of land has been omitted from the Commissioner's books and had thus become forfeited to the State under Act of February 27, 1835, its entry on such books in the year 1866, did not relieve it from forfeiture."

Yokum v. Fickey, 37 W. Va. 762.

"The payment by a tenant in common of one undivided fourth of a tract of land, of one fourth of the taxes and damages, when the whole tract has been returned delinquent for the non-payment of taxes, will not prevent forfeiture of the entire tract of land or any part thereof."

Smith v. Tharp, 17 W. Va. 221.

"By the express terms of the Act of March, 1842, which is retrospective in its operation, the title to lands forfeited to the State for failure to enter them

on the Commissioner's book and to pay taxes is transferred to, and vested in, such persons, other than those for whose default they were forfeited, as had title or claim, legal or equitable, derived under a grant from the State, dated prior to January 1, 1845, without regard to actual occupancy or a bona fide claim of title."

Wild's Lessee v. Serpell, 10 Grat. 405.

In conclusion we have to say that a law enacted by the Legislature is always within its legislative competency unless the same is inhibited by the State Constitution or is in conflict with some provision of the Constitution of the United States.

In the case of McPherson v. Blacker, 146 U. S. 25, the court says:

> "The State does not act by its people in their collective capacity, but through such political agencies as are duly constituted and established. The legislative power is the supreme authority except as limited by the Constitution of the State, and the sovereignty of the people is exercised through their representatives in the Legislature, unless, by the fundamental law, power is elsewhere reposed."

In the case of McPherson v. Blacker, 146 U. S. 25, the (Va.) 1, the Supreme Court of Virginia says:

> "It should never be forgotten that the courts can not deny validity to an act of the Legislature because it may seem to the judges that injustice has been done, or sound policy disregarded. As has been well said, the judiciary can not run a race of opinion with the law-making power upon the points of right, reason and expediency. Such an assumption would lead to dangerous conflicts of authority

and practically result in the absorption by the judiciary of the other great departments of the government.

"The Legislature represents the sovereign authority of the people, except so far as restrictions are enforced by the Constitution in express terms, or by strong implication. We look to the Constitution of the State, not for grants of power, but for limitations. When a prohibition is not found in the language of the instrument or in the framework and general arrangement there is no solid ground to pronounce the enactment void. The infractions should be clear and palpable. In the language of Judge Marshall: 'The question whether the law be void for its repugnancy to the Constitution is at all times a question of such delicacy, which ought seldom, if ever, to be decided in the affirmative in a doubtful case. The opposition between the Constitution and the law should be such that the judge feels a strong and clear conviction of their incompatibility with each other.'" (Fletcher v. Peck, 6 Cranch. 87-128.)

Judge Cooley, in his work on the Constitutional Limitations, 5th Ed. 206, marginal page 175, says:

"While, therefore, the Parliament of Britain possesses completely the absolute and uncontrolled power of legislation, the legislative bodies of the American State possess the same powers, except, (1st) as it may have been limited by the Constitution of the United States; and (2nd) as it may have been limited by the Constitution of the State. A legislative act can not, therefore, be declared void, unless its conflict with one of these two instruments can be pointed out."

ARTICLE 3 OF CHAPTER 22 IS NOT *EX POST FACTO* LAW.

In answer to the contention that the Act in question is an *ex post facto* law, forbidden by Section 10, Article 1, of the Federal Constitution, the Court of Appeals in the case of Eastern Kentucky Coal Lands Corporation v. Commonwealth, 127 Ky. at page 716, said:

> "In this connection we will notice another objection made against the statute, which is that it is an *ex post facto* law; that it punishes an act of omission by forfeiture of property which, when the act was omitted, was not so punishable by law. But such is not the fact. It is not the failure to list in the years 1901, 1902, 1903, 1904, 1905, that works the forfeiture, but it is the failure after the passage of the Act of 1906, to thereafter list the property for the five years named, and before January 1, 1907. It was within the power of the Legislature to forfeit for even one year's omission."

The forfeiture herein adjudged was not for the failure to pay taxes, nor even the failure to list or assess the lands for taxes for the years from 1901 to 1905, inclusive, but the forfeiture was adjudged for the failure of the plaintiff in error after March 15, 1906, and prior to March 1, 1907, to list and assess for taxation and pay taxes on said lands for the five omitted years in question.

The valuation of the property in order to determine the amount of taxes due was never reached for the reason that that function is essential subsequent to the func-

tion of listing. Property must be identified before it can be valued.

This feature of the case is exemplified in the opinion in the case at bar, delivered in response to the petition for rehearing (see record, pages 30 and 31). The court said:

> "There can be no serious objection to Article 3 on the ground that it is an *ex post facto* law, in so far as the said article applies to years subsequent to 1906. But it is insisted that, as the act declares, that delinquency for the years 1902, 1903, 1904, 1905 and 1906 shall be cause for forfeiture, which might have been removed on or before January 1, 1907, by the payment of the taxes and interest and penalties provided by law for the redemption of land sold for the non-payment of taxes, it visits upon the delinquent greater penalties than he was subject to prior to the passage of the act. This would be true if the delinquent had voluntarily paid the taxes for those years, but the result is not necessarily the same had the delinquent been proceeded against by an officer authorized by law to collect taxes; however, we are of the opinion that the delinquent's liabilities for those years are to be measured by his liabilities had he volunteered to list and pay his taxes. It therefore follows that the article in so far as it requires the payment of interest and penalties for the years 1902, 1903, 1904, 1905 and 1906, is inoperative, and the delinquent for those years would be required to pay only taxes without interest and penalties. But, for the reasons and upon the authorities cited in the opinion and consistent with the rulings of this court, the elimination of the interest and penalties for the years 1902, 1903, 1904, 1905 and 1906, does not affect the other provisions of the article with respect to those years, or years subsequent thereto.

> "As the appellant is under no disability, does not claim under a grant from the State of Virginia, and did not seek to list his property, or offer to pay taxes for the years 1902, 1903, 1904, 1905 and 1906, either with or without penalties, we hesitated in the opinion to pass specifically upon these questions raised by it. However, out of the consideration entertained for the eminent counsel presenting them, we have expressed our views upon these points in order that he may have the benefit of specific adjudication thereon."

We submit, therefore, that whatever might be said concerning this feature of the act upon first impression, this judicial interpretation given to it by the highest court of the State, removes from it any semblance of an *ex post facto* law.

The court said, in the case of King v. Mullins, 171 U. S. 428:

> "If, as contended, the State, without an inquisition or proceeding of some kind, declares forfeiture of the lands for failure during the named period to list them for taxation and by force alone of its Constitution or Statutes, could not take the absolute title to said lands, still it has the power by legislation to provide, as it did, a mode in which the attempted forfeiture or liability to forfeiture could be removed and the owner enabled to retain the full possession of and title to his lands."

There is now pending in this court on the docket for the present term, cases Nos. 47 and 48, of Eastern Kentucky Coal Lands Corporation v. Commonwealth of Kentucky, which, we are informed, will be argued and heard by the court with this case, and we therefore here and

now in support of our argument in this brief, refer to and adopt hereof the brief of the defendant in error, Commonwealth of Kentucky, filed in said two causes, Nos. 47 and 48.

Wherefore, the Commonwealth of Kentucky, defendant in error herein, comes into court and says that there is no error in the record or proceedings or in giving of the judgment herein complained of, and prays that the court may proceed to examine the record and dismiss the writ of error or affirm the judgment.

Respectfully submitted,

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